

INDEX

	Page
Previous opinions in the present case.....	1
Grounds of Jurisdiction.....	1
Statement of the case.....	2
Introduction.....	2
Summary of original petition.....	3
First opinion of District Court.....	5
Decree of 1914.....	7
Decree of 1918.....	9
Manner in which decree was complied with.....	11
McCormick and Deering lines consolidated.....	12
Summary of supplemental petition.....	13
Second opinion of District Court.....	15
Specification of errors to be urged.....	17
Summary of argument.....	19
Argument:	
I. Purpose of decrees was to restore competitive conditions substantially as they existed before the illegal combination was formed.....	20
II. The Osborne, Champion, and Milwaukee lines were comparatively unimportant when acquired by defendants and by 1918 had so diminished in value that their sale had a negligible effect upon competitive conditions..	28
1. The inadequacy of the decree in general..	28
2. Dwindling importance of the lines sold...	32
III. The court erred in holding that since the entry of the decree in 1918 competitive conditions have been free and untrammelled and that powerful and successful competitors contest the field.....	36
A. Machines sold by purchasers during test period built by International Harvester Company.....	36
B. Purchasers were mere sales agents for the International Harvester Company.....	
C. Comparison of machinery, etc., sold by International Harvester Company with the invested capital of that company...	42
D. Many well-established companies retired from business during test period.....	42

Argument—Continued.

Summary—Continued.

	Page
IV. Defendants have such advantages as to be able to dominate completely the manufacture and sale of harvesting machines and their appurtenances and to dictate prices, and they do exercise such domination.....	48
1. Dominance shown by investment and returns of International Harvester Company.....	48
A. The Federal Trade Commission report.....	48
B. Corrections of Commission's report.....	55
C. Question of inventories, etc.....	60
D. Earnings reflected, etc.....	63
E. Dominance shown by enormous profits, etc.....	65
F. Dominance shown by tremendous advantage enjoyed by International Harvester Company over competitors in matter of manufacturing costs.....	73
G. Intercompany profit.....	79
H. Pittsburgh plus.....	83
2. Dominance of International Harvester Company reflected in its control over prices.....	91
A. Control over competitor's prices.....	91
B. Prices of old and new line machines.....	99
V. Unreasonably high prices not test of Sherman Law.....	102
VI. Certain defenses considered.....	113
1. Attempt to prove competitive conditions by number of dealers in harvesting machinery.....	113
A. Decree restricting Harvester Company to one dealer in each town.....	113
B. Implement dealer census of 1923.....	117
C. Testimony of dealers.....	119
2. Contention that harvester business is now unimportant.....	121
3. Contention that separation of McCormick and Deering lines is impracticable....	125
4. Contention that Steel Case is controlling...	128
5. Contention that depression excuses failure of decree.....	131
Conclusion.....	182

III

Appendices:

	Page
A. Sales by lines of binders, mowers, reapers, etc., by the International Harvester Co., 1903-1923.....	137
B. Harvesting machines sold by International Harvester Co., 1919, 1920, 1921, 1922, 1923.....	146
C. Inventory methods.....	156
D. Funds set aside for foreign business.....	163
E. Depreciation charge against iron-ore leaseholds.....	165
F. Capital and surplus of International, 1902-1923; and statement of dividends paid, 1903-1922.....	168
G. Manufacturer's cost of binders and mowers, by companies.....	171
H. Reported and revised costs of binders and mowers.....	177
I. Wholesale prices of binders and mowers by companies.....	180
J. Comparison of wholesale prices, 1913-1923.....	182
K. Number of branch houses and dealers maintained by different companies and average number of machines sold per dealer.....	184

CASES CITED

<i>American Column & Lumber Co. v. United States</i> , 257 U. S. 377.....	92
<i>Chicago Board of Trade v. Olsen</i> , 262 U. S. 1.....	49
<i>Continental Insurance Company v. United States Reading Company</i> , 259 U. S. 156.....	25, 28
<i>Hocking Valley Case</i> , 203 Fed. 295; 281 Fed. 1007.....	27, 28
<i>International Harvester Co. v. Kentucky</i> , 234 U. S. 216.....	102, 110
<i>International Harvester Co. v. State</i> , 234 U. S. 199.....	110
<i>National Cotton Oil Company v. Texas</i> , 197 U. S. 115.....	112
<i>Richardson v. Buhl</i> , 77 Mich. 632.....	105
<i>State v. International Harvester Co.</i> , 237 Mo. 369.....	108
<i>United States v. American Linseed Oil Co.</i> , 262 U. S. 371.....	92
<i>United States v. American Tobacco Company</i> , 221 U. S. 106.....	25
<i>United States v. Cement Manufacturers Protective Ass'n</i> , 294 Fed. 370.....	93
<i>United States v. Cohen Grocery Company</i> , 255 U. S. 81.....	103
<i>United States v. International Harvester Co.</i> , 214 Fed. 987.....	58, 107
<i>United States v. Joint Traffic Ass'n</i> , 171 U. S. 505.....	112
<i>United States v. Lehigh Valley R. R. Co.</i> , 254 U. S. 255.....	25, 27
<i>United States v. Northern Securities Company</i> , 193 U. S. 197.....	23, 112
<i>United States v. Reading</i> , 226 U. S. 324.....	113
<i>United States v. Reading Company</i> , 233 U. S. 26.....	25, 27, 35
<i>United States v. Standard Oil Company</i> , 221 U. S. 1.....	24, 107, 135
<i>United States v. Trans-Missouri Freight Ass'n</i> , 166 U. S. 290.....	106
<i>United States v. Union Pacific Railroad Co.</i> , 226 U. S. 61.....	24, 26, 112
<i>United States v. United States Steel Corporation</i> , 251 U. S. 417.....	129

OTHER CITATIONS

21 Congressional Record, 2457.....	103, 104
2458.....	105

	Page
21 Congressional Record, 2460.....	103, 104
2570.....	105
2726.....	105
Missouri Antitrust Act, Sec. 10301; R. S. 1909.....	108
Reg. 65, Income Tax, Revenue Act 1924.....	60
Sherman Act, c. 647, 26 Stat. 209.....	133
Wilson Act, c. 349, 28 Stat. 570; c. 40, 37 Stat. 667.....	133
Panama Canal Act, c. 390, 37 Stat. 560.....	133
Federal Trade Commission Act, c. 311, 38 Stat. 717.....	133
Clayton Act, c. 730, 38 Stat. 730.....	133
Webb Export Act, c. 50, 40 Stat. 516.....	133
Capper-Volstead Act, c. 57, 42 Stat. 388.....	133
Packers and Stockyard Act, c. 64, 42 Stat. 159.....	133
Expediting Act, c. 544, 32 Stat. 823; c. 428, 36 Stat. 854.....	2

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 254

THE UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL HARVESTER COMPANY ET AL.

*ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF MINNESOTA*

BRIEF ON BEHALF OF THE UNITED STATES

PREVIOUS OPINIONS IN THE PRESENT CASE

The opinion of the District Court and the dissenting opinion of Judge Sanborn on the original petition are reported in 214 Fed. 987; the opinion of the District Court and the dissenting opinion of Judge Stone on the supplemental petition, dated May 19, 1925, are unreported and appear at R. 373.

GROUND OF JURISDICTION

This is an appeal from a final decree of the District Court of Minnesota entered June 2, 1925. The decree appears at R. 374.

The petition of the United States for appeal to this Court was allowed July 21, 1925. (R. 376.) Assignment of errors appears at R. 374-376.

Jurisdiction is invoked under Section 2 of the Expediting Act of February 11, 1903, as amended by the Act of June 29, 1910 (c. 544, 32 Stat. 823; c. 428, 36 Stat. 854) and Section 238 of the Judicial Code (Act of March 3, 1911, c. 238, 36 Stat. 1157), as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE

Introduction

This is an appeal from a final decree of the District Court of Minnesota dismissing a supplemental petition of the United States to obtain relief in addition to that afforded by a decree entered by that court on November 2, 1918.

The original petition was filed fourteen years ago and the case was decided in favor of the Government. A decree was entered, from which the defendants appealed; defendants¹ later withdrew the appeal and a stipulated decree was entered in the District Court which permitted the Government to ask for further relief, if necessary, after the expiration of a test period. The Government filed a supplemental petition requesting such further relief and the court dismissed the petition. Thereupon the Government appealed to this Court.

By the decree of 1918 the court ordered that competitive conditions be restored and a new situation in harmony with the law be created.

¹ Defendants in error hereafter called defendants.

The Government's contention is that competitive conditions comparable to those existing in 1902, when the combination was formed, have never been restored despite the fact that the test period has been greatly prolonged, and that the present situation in the harvester industry is not in harmony with the law.

Effort has been made to avoid a lengthy brief. However, this case is primarily one of fact, and in order to properly present it to this Court it has been necessary to include numerous tables of statistics and detailed statements of fact.

Summary of original petition

The original petition filed April 30, 1912, charged that defendants were engaged in a combination and conspiracy in restraint of interstate trade and commerce in agricultural implements, more especially harvesting implements and binder twine, and were attempting to monopolize and had monopolized such trade and commerce in violation of the Act of July 2, 1890 (c. 647, 26 Stat. 209), known as the Sherman Antitrust Law.

It alleged that the International Harvester Company was formed in 1902 with a capital stock of \$120,000,000, pursuant to an unlawful scheme to combine the five most important concerns manufacturing and selling harvesting machinery, and thus to eliminate all competition between them and restrain and monopolize the interstate trade and commerce in harvesting machines.

It further alleged¹ that the five concerns, the McCormick Harvesting Machine Company, the Deering Company, the Plano Manufacturing Company, Warder, Bushnell and Glessner Company (hereafter called the Champion), and the Milwaukee Harvester Company, together controlling more than 85 per cent of all the harvesting machinery and more than 50 per cent of all the binder twine produced and sold in the United States, were acquired by the International Harvester Company on its formation.

The petition further alleged that in 1903, in pursuance of the same unlawful purpose, the International Harvester Company acquired the capital stock and plant of D. M. Osborne and Company, Auburn, N. Y. (including the plant and business of the Columbian Cordage Company), its largest remaining competitor in harvesting machines and binder twine, and that during the same year the International Harvester Company also acquired control of the Aultman Miller Company (hereafter called the Buckeye), Akron, Ohio, the Minnie Harvester Company (including the Grass Twine Company), St. Paul, Minnesota, and the Keystone Company, Sterling, Illinois, all able competitors in the harvesting machine line.

These acquisitions, it was alleged, were concealed for several years, and the companies were operated

¹ Complete summarization of the original petition is given in the supplemental petition (R. 1-9).

as independent of the International Harvester Company, in pursuance of a policy of disguising ownership in order to control and use the companies to break down competition and secure for the International Harvester Company the benefit of public sentiment against combinations.

The petition also set up the formation of the Wisconsin Steel Company and the Wisconsin Lumber Company and charged, *inter alia*, the use by the International Harvester Company of various forms of oppressive and unfair trade practices. The consolidation of competing companies was the gist of the charge, such consolidation constituting a combination in restraint of trade or commerce among the several States within the terms of Section 1 of the Sherman Antitrust Law.

First opinion of the District Court

In August, 1914, the District Court, composed of Circuit Judges Sanborn, Hook, and Smith, handed down its decision,² 214 Fed. 987 (R. 378-379), holding the International Harvester Company to be a combination in restraint of trade and a monopoly in violation of the Antitrust Act. While the court found that the defendant had concealed its control of certain acquired companies, as charged in the petition, and noted that the evidence showed some instances of attempted oppression

² Judge Smith wrote the majority opinion; a separate concurring opinion was filed by Judge Hook and a dissenting opinion by Judge Sanborn.

(characterized as sporadic), it based its decision wholly upon the combining by and through the International Harvester Company of able competitors controlling upward of eighty-five per cent of the harvesting-machine business.

"That," said Judge Hook in his concurring opinion, "is the controlling fact; all else is detail."

The principles underlying the decision are stated in the following excerpts from the opinion of Judge Smith:

Suppression of competition, where the parties to a combination control a large portion of the interstate or foreign commerce in the article, and where there is no obligation to form the combination arising out of the fact that the parties to the same are losing money, or the like, has been held an undue restraint of trade (citing numerous cases).

* * * * *

We think it may be laid down as a general rule that if companies could not make a legal contract as to prices or as to collateral services, they could not legally unite, and as the companies named did in effect unite, the sole question is as to whether they could have agreed on prices and what collateral services they could render when their companies were all prosperous and they jointly controlled 80 to 85 per cent of the business in that line in the United States. We think they could not have made such an agreement (citing cases).

There is no limit under the American law to which a business may not independently grow, and even a combination of two or more businesses, if it does not unreasonably restrain trade, is not illegal; but it is the combination which unreasonably restrains trade that is illegal, and if the parties in controversy have 80 or 85 per cent of the American business, and by combination of the companies all competition is eliminated between the constituent parts of the combination, then it is in restraint of trade within the meaning of the statute, under all of the decisions.

* * * * *

We conclude that the International Harvester Company was from the beginning in violation of the first and second sections of the Sherman Law, and that this condition was accentuated by the reorganization of the American Company and by the subsequent acquisitions of competing plants, and that all the defendant subsidiary companies became from time to time parties to the illegal combination, and the defendant companies are combined to monopolize a part of the interstate and foreign trade.

The Decree of 1914

The order of the court was that the entire combination and monopoly be dissolved "into at least three substantially equal, separate, distinct, and independent corporations, with wholly separate

owners and stockholders," and the defendants were given ninety days in which to file a plan for carrying into effect that order. (214 Fed. 1001.) On August 15, 1914, a decree was entered pursuant to said order. On October 3, 1914, said decree was amended by striking out all references to foreign commerce and by substituting in place of the language of the order above quoted the following (R. 379):

It is adjudged and decreed that said combination and monopoly be forever dissolved, and to that end that the business and assets of the International Harvester Company be divided in such manner and into such number of parts of separate and distinct ownership as may be necessary to restore competitive conditions and bring about a new situation in harmony with law; and that the defendants file with the clerk within ninety (90) days a plan for such separation and division for the consideration of this Court.

The defendants appealed to this Court, where the case was argued at the October Term, 1914, and was restored to the docket for reargument. It was again argued at the October Term, 1916, and was a second time restored to the docket. In October, 1918, the defendants dismissed their appeal and the cause was remanded to the District Court pursuant to a stipulation between parties (R. 383) for the entry of a decree the terms of which had been agreed upon. That decree was entered November 2, 1918. (R. 384-388.)

The Decree of 1918

The decree of 1918, after setting forth the substance of the decree of 1914, recites that the principal corporate defendant changed its name to International Harvester Company of New Jersey and in September, 1918, was merged into a new corporation named International Harvester Company which appeared as successor to defendant.

It ordered that the decree hereinabove set forth be reinstated and that the name International Harvester Company include both the original and the successor corporation (R. 386).

Thereafter the parties to the decree having submitted a plan of dissolution which was approved by the court, it was further ordered that (a) defendants should be enjoined from having more than one representative in any town or city; that (b)—

The International Harvester Company shall, with all due diligence, offer for sale, at fair and reasonable prices, the harvesting machine lines now made and sold by the International Harvester Company under the trade names of "Osborne," "Milwaukee," and "Champion," respectively, including the exclusive right to use such trade names, and all patterns, drawings, blue prints, dies, jigs, and other machines and equipment specially used by the International Harvester Company in the manufacture of said three harvesting machine lines respectively;

and each purchaser must be a responsible manufacturer of agricultural implements in the United States, and, if a corporation, none of the defendants shall have any substantial stock interest in such purchaser, nor shall any defendant be such purchaser,

with a provision for a satisfactory purchase price; that (c) the International Harvester Company should offer and endeavor to sell in connection with the harvester lines the Champion plant and works at Springfield, Ohio, and the No. 1 Osborne harvester plant and works at Auburn, New York; and that the fair price should be decided by the court in case of disagreement; that (d) in the event that the three harvester lines, plants, patterns, etc., were not sold within one year after the close of the existing war, then upon the request of the United States they should be sold at public auction; and finally that (e):

The object to be attained under the terms of this decree is to restore competitive conditions in the United States in the interstate business in harvesting machines and other agricultural implements, and, in the event that such competitive conditions shall not have been established at the expiration of eighteen months after the termination of the existing war in which the United States is engaged (or at the expiration of two years from the date of the entry of this decree in the event that said war shall be terminated

within less than six months after the entry of this decree), then and in that case the United States shall have the right to such further relief herein as shall be necessary to restore said competitive conditions and to bring about a situation in harmony with law; and this Court reserves all necessary jurisdiction and power to carry into effect the provisions of the decrees herein entered.

Manner in which decree was complied with

The agreement upon which the decree of November 2, 1918, was based was signed by parties to the suit on July 11, 1918. A week later, on July 19, defendant executed with the Emerson-Brantingham Company a contract for the sale of the Osborne line which contemplated no more than the sale of the trade name and a trifling amount of machinery, and provided that the International Harvester Company would furnish the machines for the 1919 and 1920 seasons. This agreement, of which the Government was ignorant, and which must have been in contemplation when the agreement with the Government was signed, was a distinct departure from the decree which had been agreed upon.

A similar contract for the disposition of the trade name of the Champion line and certain machinery was executed with B. F. Avery & Sons on December 27, 1918. This contract also provided that the International Harvester Company would furnish all machines for the 1919-1920 selling seasons.

It was not until some time in 1920, practically two years after the date of the agreement with the Government, that the court and the Government were apprised of these transactions. The defendant then filed an application representing that the purchasers of these lines owned plants adequate to manufacture the newly acquired lines and asking that it be permitted to sell the lines without the necessity of disposing of the physical properties, as the decree had contemplated. Permission was granted.

The Milwaukee line, which the defendant was required to sell within one year after the close of the war, was not sold until March 24, 1924, more than two years after the close of the war, and eight months after the filing of the supplemental petition. Then it was sold to the Moline Plow Company, which had abandoned its harvester line in 1923, the contract providing that the defendant would furnish machines for the 1924-1925 seasons.

The consolidation of McCormick-Deering line

In 1913, while the case was pending in the District Court, the company sought to separate its foreign business and its so-called "new line" business from its harvester business. Accordingly, a new company, the International Harvester Corporation, was formed to take over the business. According to the testimony of Mr. Legge (R. 210),

the company gave assurance to the Attorney General that no changes would be made which would interfere with the carrying out of any decree the court might make. Nevertheless, in 1920, the company began experimentation to and later did consolidate the McCormick and Deering harvester lines (*infra*, pp. 125-128). And despite the provisions of Paragraph (e) of the decree, despite the fact that the Federal Trade Commission in May, 1920, recommended the reopening of the case, under Paragraph (e) of the decree, to separate the McCormick and Deering lines of harvesting machines, despite the hereinafter-mentioned resolution of the United States Senate, defendants in 1922 marketed a few McCormick and Deering combined machines, and in 1923 marketed a few thousand of such combined machines, and when the supplemental petition was filed put forth as a reason for denying the relief to which the Government is entitled the alleged impracticability of separating such lines because they have been so combined.

Summary of the supplemental petition

The test period provided in the decree of November 2, 1918, having expired, the United States, on July 17, 1923, filed its supplemental petition (R. 1-26), alleging the inadequacy of the decree to accomplish its declared purpose, that it had not,

in fact, accomplished that purpose, and praying "that the business and assets of the defendant, the International Harvester Company, be separated and divided among at least three separate, distinct, and independent corporations, with wholly separate owners, stockholders, and managers, substantially as suggested by the Federal Trade Commission in its report to the Senate dated May 4, 1920" (R. 26-60).²

As showing the inadequacy of the decree to effect a restoration of competitive conditions, the supplemental petition alleged that from its formation the policy of the International Harvester Company has been to develop and increase the output and sales of the McCormick and Deering brands of harvesting machines and to smother and suppress the manufacture and sales of the other brands acquired by it, and, as the result, during the period from the acquisition of said lines to the entry of said decree the proportion of the output and sales of the Champion, Osborne, and Milwaukee lines to the output and sales of the McCormick and Deering lines had steadily diminished.

The supplemental petition further alleged that the sale by the International Harvester Company of its Osborne and Champion lines, pursuant to

² Original certified copy of P. (S) 190, Report of Fed. Tr. Com., sent up with transcript of record to this Court of the United States for reference. (R. 493.)

the decree,⁴ had not had the the effect to restore competitive conditions, since during the test period provided herein several of the International Company's principal competitors had gone out of business, due to their inability to compete with it, and that its percentage of the total trade and commerce in harvesting machines had increased over what it enjoyed in 1918 when the decree was entered.

It alleged that the International Harvester Company, with its enormous capital, credit, and resources, its profitable side lines and lumber, steel and coal subsidiaries, is enabled, particularly in times of depression, to sell its harvesting machines at cost, which cost is generally lower than that of its competitors, and thus effectively eliminate competition and monopolize the business. Upon information and belief it was alleged that the International Company, particularly since the entry of said decree, had used its great power in the manner charged for the purpose and with the effect of restraining interstate trade and commerce in harvesting machines.

Second opinion of the District Court

On May 19, 1925, the District Court (Circuit Judges Sanborn and Lewis concurring, and Circuit Judge Stone dissenting) handed down its decision (R. 369-371), holding that the evidence conclusively

⁴ The Milwaukee line was not disposed of until 1924, after the filing of the supplemental petition and during the taking of the testimony thereunder.

proved that since the sale of the Osborne, Milwaukee, and Champion the International Harvester Company has not been and is not unduly or unreasonably monopolizing or restraining interstate commerce in harvesting machines nor their appurtenances in the United States; that competition in the manufacture and sale of harvesting machines and their appurtenances in the United States had been free and untrammelled; that the percentage of machines made and sold by the International Harvester Company had decreased from 85% in 1902 to 64% at the time of the decree of November 2, 1918 (R. 373); and that powerful and successful independent competitors contest the field with the Harvester Company; that it can not control or dictate prices; that prices have decreased and are low in proportion to costs; that the purpose of preventing undue restraint of trade is to prevent unreasonably high prices to purchasers and users. Order dismissing supplemental petition was entered June 2, 1925. (R. 374.)

Judge Stone wrote a dissenting opinion holding that the evidence upon the application showed that the plan followed by defendants under the decree of November 2, 1918, had failed entirely to restore competitive conditions; that true competition does not exist where one of the "competitors" so entirely dominates the particular industry or trade that it can and does dictate the "competitive" prices; that "competition which depends upon the

sufferance of one of the competitors is a complete sham", that "the evidence convinces me that the International has such advantages in resources, organization, selling mediums, production costs, ownership and manufacture of raw material (steel) and in volume and spread of business as to be able completely to dominate this business"; that "it does so control and dominate by regulating prices"; that "the International fixes prices for its own harvesting machinery, and the other manufacturers prudently govern their prices thereby"; and that the court "should consider means to restore real competitive conditions, either by carrying out some division of assets and property in accordance with the decree or by orders which will prevent the harmful exercise, by defendants, of the existing power to control this vital industry." (R. 372-373.)

The order of the District Court was that "the supplemental petition of the United States filed in this case on July 17, 1923, be and it is hereby dismissed." (R. 374.)

SPECIFICATION OF ERRORS TO BE URGED

The United States relies upon the following assigned errors:

1. The court erred in not holding that the purpose of the Sherman Act and of the decree entered against defendants on August 15, 1914, as amended by the decree entered October 3, 1914, and the decree entered November 2, 1918, was to restore

competitive conditions in the harvesting-machine industry substantially as they existed before the illegal combination was formed.

2. The court erred in holding that the objects of the decree entered against defendants on August 15, 1914, as amended by the decree entered on October 3, 1914, and the decree entered on November 2, 1918, have been successfully attained, and that the evidence shows that competitive conditions have been restored in the harvesting-machine industry.

3. The court erred in not holding that the lines disposed of by defendants were comparatively unimportant when acquired by defendants, and that by 1918 the sales of the Osborne, Champion, and Milwaukee lines had so diminished as compared with the McCormick and Deering lines retained by defendants as to render them negligible.

4. The court erred in not holding that defendants have such advantages in resources, organization, selling media, production costs, ownership, and manufacture of raw material and in volume and spread of business as to be able completely to dominate the business of manufacturing and selling harvesting machines and appurtenances.

5. The court erred in failing to hold that practically no new competition was created as the result of the decree dated November 2, 1918, and that competitive conditions were practically unchanged as the result of the entry of said decree.

6. The court erred in holding that the purpose of preventing undue restraint of trade is to prevent unreasonably high prices to the purchasers and users of the articles traded in.

7. The court erred in not holding that defendants so dominate and control the business in harvesting machines and appurtenances that they can and do dictate prices.

8. The court erred in failing to order a further division of the business and assets of the International Harvester Company substantially as recommended by the Federal Trade Commission in its report to the Senate dated May 4, 1920, and as prayed in the supplemental petition of the United States.

SUMMARY OF ARGUMENT

I

The purpose of the decrees entered against defendants was to restore competitive conditions in the harvesting-machine industry substantially as they existed before the illegal combination was formed.

II

The Osborne, Champion, and Milwaukee lines were comparatively unimportant when acquired by defendants, and by 1918 had so diminished in value that their sale had but a negligible effect upon competitive conditions.

III

The court erred in holding that since the entry of the decree in 1918 competitive conditions have been free and untrammelled and that powerful and successful competitors contest the field.

IV

Defendants have such advantages as to be able to dominate completely the manufacture and sale of harvesting machines and their appurtenances, and to dictate prices; and they exercise such domination.

V

The purpose in preventing undue restraint is not merely to prevent unreasonably high prices to purchasers and users, and the court erred in applying such a test to the Sherman Law.

ARGUMENT

I

The purpose of the decrees entered against defendants was to restore competitive conditions in the harvesting machine industry substantially as they existed before the illegal combination was formed

Prior to 1902 the aggregate output of five concerns—the McCormick Harvesting Machine Company, the Deering Company, the Plano Manufacturing Company, Warder, Bushnell and Glessner Company, and the Milwaukee Harvester Company—manufacturing and selling harvesting ma-

chinery and twine, amounted to more than 85% of all the harvesting machinery and more than 50% of all the binder twine for use in the United States.

Each of the five was independent and in unrestrained competition with all of the others, and each had established a successful, profitable, and expanding business.

In 1902 the International Harvester Company was incorporated and acquired the business and property of each of the five and later acquired the remaining defendant companies.

The Government, in the original petition charged, and the court in its opinion and decrees found, that the International Harvester Company was organized as an unlawful combination in 1902. The basic charge was the suppression of competition *inter se* by companies controlling more than 85% of the harvester business, and although the Government alleged the use by the International Harvester Company of oppressive measures against competitors some of which were not sustained, such abuses were mere incidents of the case, and the *gravamen* was the combination of competing companies which made the International Harvester Company in and of itself a combination in restraint of trade in violation of Section 1 of the Antitrust Law. Therefore, by restoring competitive conditions the decree necessarily means the restoration of the free and open competition which existed when the combination was formed.

This is the only meaning consistent with the nature of the relief embodied in the decree, the declared purpose of which was to "restore competitive conditions" and bring about a "situation in harmony with law." To achieve this declared purpose it was provided that the International Harvester Company should divest itself of certain of its plants and lines of harvesting machines, each of which was to be sold "to a responsible manufacturer of agricultural implements in the United States" in which the International Harvester Company had no substantial stock interest. The result intended to be accomplished was to increase the amount of competition and the number of competitors. Thus to the expression "competitive conditions" was applied a quantitative rather than qualitative admeasurement.

The order contained in the majority opinion of Judge Smith was, that the defendant report a plan "for the dissolution of the entire unlawful business into at least three substantially equal, separate, distinct, and independent corporations with wholly separate stockholders." At the time there was much criticism of the division of the Tobacco Trust into three parts, and the Government must have regarded with disfavor the limitation upon the number of corporations to be created out of the unlawful elements composing the combination. In the amended decree, seemingly to offset a concession made to the defendants, this limitation was

excluded, and the business and assets of the International Harvester Company were ordered to be divided "in such manner and into such number of parts as may be necessary to restore competitive conditions."

The inclusion of a test period in the decree indicates the decree provided for the restoration of actual competition between elements of the existing combination, not merely for the creation of potential power to compete. The court knew that under the conditions which prevailed prior to 1902, free and active competition had flourished, and recognized that if the same or approximately the same quantum of competition could be restored, there would again arise the desired competitive conditions. The only test which can be applied, therefore, is whether the decree of 1918 has had the effect actually to restore in the harvesting machine industry the competitive conditions which obtained prior to 1902.

This is the only meaning consistent with the authorities and precedents. Prior to the *Tobacco Case* this Court, in giving effect to the Sherman Law, had found it unnecessary to go further than (1) to enjoin the carrying out of unlawful contracts or agreements, and (2) to dissolve combinations by ordering the distribution of the stocks of subsidiary companies among the stockholders of the parent or holding companies. The *Northern Securities Case*, 193 U. S. 197, and the *Standard Oil*

Case, 221 U. S. 1, are typical of earlier method of dissolving trusts. There can be no doubt as to the purpose to restore competitive conditions as they existed prior to the combination by directing the distribution of the stocks of the controlled companies. Had it not been for the continuing common control, resulting from the manner in which the stocks were distributed, these would have been perfect examples of complete dissolution.

In the *Union Pacific Case*, 226 U. S. 61, this Court at first made the customary formal order for the presentation to the District Court within three months of a plan of segregation. Before the mandate had gone down both parties applied to this Court to instruct the District Court whether or not a sale of the Southern Pacific Company shares held by the Union Pacific Railroad Company to the stockholders of the Union Pacific Railroad Company, substantially in proportion to their respective holdings, or a distribution thereof by dividend to the Union Pacific stockholders, would constitute a disposition of the shares in compliance with the opinion. This Court held that as the ultimate determination of the affairs of a corporation rests with its stockholders and arises from their power to choose the governing board of directors, it would not approve a method of distributing the stock of a railroad company held by a competitor so that the natural result would be that a majority of the governing boards of both roads would consist of the same persons. (226 U. S. 470.)

The purpose of the court was broader than the reasons assigned in the opinion might indicate. Interlocking directorates could have been prevented by injunction, as had already been done in the *Tobacco Case*. (Decrees and Judgments in Federal Antitrust Cases, 165, 189.) The obvious purpose was to decree, as a principle to be observed in the dissolution of combinations violative of the Sherman Law, (1) that there should be a restoration of the competitive situation which obtained when the combination was formed by a complete segregation of the combined companies, and (2) that to make the relief effective provision should be made for placing such companies under separate and distinct ownership, management, and control.

How thoroughly the Court has given effect to this principle is illustrated by the *Reading Case*, 253 U. S. 26 (see also *Continental Insurance Co. v. United States and Reading Company*, 259 U. S. 156), and the *Lehigh Valley Case*, 254 U. S. 255. Both cases involved combinations of both railroad and mining companies, and relief was asked both under the Sherman Law and the Commodities Clause of the Hepburn Act. In the *Reading Case* the District Court, composed of the circuit judges of the Third Circuit, found in favor of the Government on only one point, namely, that the acquisition by the Reading Company of the control of The Central Railroad Company of New Jersey, which in turn controlled the Lehigh & Wilkes-Barre Coal

Company, resulted in an unlawful combination between the last-named company and the Philadelphia & Reading Coal & Iron Company, two large producers and sellers of anthracite coal, in violation of the Antitrust Act. The decree was that the Jersey Central should dispose of all stocks and bonds of the Lehigh & Wilkes-Barre Company owned by it, in accordance with the decision in the *Union Pacific Case*, i. e., to persons, firms, or corporations not stockholders of or otherwise affiliated with Reading Company. (226 Fed. 229, 285.)

Cross appeals having been taken, this Court affirmed the decree in so far as it required the segregation of the two coal companies and reversed it in other important respects. (253 U. S. 26.) In short, the Court found that, by a reorganization scheme executed in 1896, the Reading Company, a holding company, came into the possession and control of the entire capital stocks of the Philadelphia & Reading Railway Company and the Philadelphia & Reading Coal & Iron Company, and later acquired control of the Jersey Central and the Lehigh & Wilkes-Barre companies, and on this state of facts held that the combination, both before and after the acquisition of the Jersey Central, violated the Sherman Act, and that the relations between the Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, and the Central Railroad Company of New Jersey must be

so dissolved as to give to each of them a position in all respects independent and free from stock or other control of any of the others.

This perfectly illustrates our understanding of the present view of this Court that decrees in anti-trust cases must provide as nearly as possible for the restoration of the situation as it existed when the combination was formed. The Court decreed this sweeping relief "to the end that the affairs of all these now combined companies may be conducted in harmony with the law." The similarity between this declaration of purpose and that contained in the decree in this case is significant.

The *Lehigh Valley Case* also involved a combination between two anthracite producing companies and two railroads. As in the *Reading Case*, the order was that the combination effected through the intercorporate relations subsisting between those companies be dissolved in such manner as to establish their entire independence of and from each other. Here again this Court provided for a complete restoration of the *status quo ante*. To the same effect was the decree in the *Hocking Valley Case*, 203 Fed. 295; Decrees and Judgments in Federal Antitrust Cases, 289. Not only have the courts in these coal cases provided for a complete segregation of the combining companies by providing for the disposition of all stocks, bonds, or other evidence of indebtedness of any one company owned or controlled by any other, but they have not hesi-

tated to disrupt joint mortgages when such action was found necessary to an effective dissolution. (*Continental Insurance Case*, 259 U. S. 156; *Hocking Valley Case*, 281 Fed. 1007.)

II

The Osborne, Champion, and Milwaukee lines were comparatively unimportant when acquired by defendants, and by 1918 had so diminished in value that their sale had but a negligible effect upon competitive conditions

The inadequacy of the decree in general

The decree of November 2, 1918, contemplated the sale of the plants and other physical properties appertaining to the Osborne and Champion, but when the International Harvester Company, by a contract dated July 19, 1918, more than three months before the date of the final decree, sold the Osborne line to the Emerson-Brantingham Company of Rockford, Illinois (Pet. Ex. 14, R. 407), and by a contract dated December 27, 1918 (Pet. Ex. 27, R. 431), sold the Champion line to B. F. Avery & Sons of Louisville, Kentucky, the contracts looked only to the transfer of the trade names, good will, and certain equipment. The Milwaukee line was disposed of March 5, 1924, eight months after the filing of the Supplemental Petition. (Def. Ex. 31, R. 624.) In 1920 the International Harvester Company made application to the court for a modification of the requirement that the physical properties pass with the lines, representing that the

purchasers of the lines were already engaged in the manufacture of harvesting machines, that they each had plants adequate to manufacture the newly acquired lines, and that neither desired to acquire the plants of the International Harvester Company at which those lines had theretofore been produced. The application was granted. (Supp. Pet. 27-28; Ans. 4.)

The Federal Trade Commission, in response to a resolution of the United States Senate entered May 13, 1918 (R. 490), made an investigation of the causes for the high cost of farm implements and the facts relative to any combinations in the harvesting machine industry. On May 4, 1920, the Federal Trade Commission submitted its report. (R. 26-60.) The report contains a sweeping condemnation of the decree, which is found to be utterly inadequate to achieve its declared purpose, because (1) of the great disparity in the matter of investment and sales between the lines and properties to be sold and those to be retained; (2) the large and increasing factory costs of the lines to be sold as compared with the lines to be retained; and (3) the wide spread in cost between the McCormick and Deering lines and competitive lines.

On January 24, 1922, the United States Senate adopted a resolution directing that the Attorney General inform the Senate what action, if any, was contemplated by the Department of Justice to bring about the modification of the decree of No-

vember 2, 1918. (Pet. Ex. 89, R. 491.) The preamble contains a denunciation of the decree, because (a) it provided only that the International Harvester Company should divest itself of "certain minor and comparatively unimportant and unprofitable properties" and (b) left the said company "in the possession of those predominant elements the ownership of which had been the prime reason for the commencement of the action, to wit, the McCormick and Deering plants and lines, and thus surrendered the substantial results obtained and for which the suit had been instituted."

When acquired by the defendants, the Champion, Osborne, and Milwaukee lines, which were to be disposed of under the decree, were unimportant as compared with the McCormick and Deering lines, which were to be retained. Accepting the figures given by defendants (Ans. 6-7, R. 63), the amounts originally paid by the International Harvester Company for the business and assets (other than receivables) of the merged companies were as follows:

McCormick.....	\$26,313,312.02
Deering.....	21,355,761.58
Osborne (including assets of Columbian Cordage Company)*.....	6,198,875.21
Champion.....	3,453,853.61
Milwaukee.....	2,092,084.95
Plano.....	2,272,901.16
Total.....	\$31,286,888.53

* The assets of these companies were acquired for cash; the other figures represent payments in the stock of the International Harvester Company.

Thus the percentage of the investment in Osborne Company (and the Columbian Cordage Company) to the total investment in the companies named was 9.95; the percentage of the Champion Company was 5.54; and the percentage of the Milwaukee Company was 4.32. The combined percentage of the Osborne, Champion, and Milwaukee to the total was 19.82. (There is no occasion to consider this feature at length because as it developed no plants were sold, merely trade names and a small amount of equipment.)

That the lines disposed of under the decree were of little or no importance not only is established by the trifling number of machines of those lines sold just prior to and at the time the decree was entered but appears from the testimony of competitors. Thus Edward K. McLean, Jr., Secretary of the now defunct Walter A. Wood Company, testified as follows (R. 92):

Prior to 1918 the harvesting-machine lines of the International Harvester Company were prominent in our territory, particularly the McCormick and Deering brands. With the exception of the South, where Avery is embarked in the harvesting-machinery business, I should not say that the Osborne and Champion lines were met in competition more often in 1920, 1921, and 1922 than in 1918.

To the same effect was the testimony of George N. Peck, president of the Moline Plow Company (R. 105):

The most prominent trade names of the International Harvester Company are Mc-

Cornick and Deering. The Champion was not as prominent a line, but it has been a well-known machine in the trade for many years. The same is true of the Osborne line. In the eastern territory I think perhaps it was more of a factor than the Champion. The Milwaukee has not been a considerable factor for a number of years.

Dwindling importance of the lines sold

By 1918 the sales of the Osborne, Champion, and Milwaukee lines as compared with sales of the McCormick and Deering lines had so diminished as to render them negligible. Because of the overwhelming importance of their companies as compared with the others acquired, the McCormick and Deering interests dominated the International Company.

During the first ten years of its existence, all the stock of the International Harvester Company was voted by a board of trustees, consisting of one representative of the McCormicks, one representative of the Deerings, and a representative of J. P. Morgan & Company. As the object in acquiring the other lines was accomplished when their competition was suppressed, it was not unnatural that the other lines should be subordinated to the McCormick and Deering. That their competition was suppressed appears further from the policy followed by the International Harvester Company according to the testimony of Legge, president of that company. The Osborne factory being located at Auburn, near seaboard, machines of that line were sold largely in the foreign trade. (R. 182.)

The Osborne binders were approximately 185 pounds heavier than the machines sold in the domestic trade. (R. 210.) The Milwaukee machine, on the other hand, was too light (R. 183), and its manufacture was subsequently removed from the plant at Milwaukee to the McCormick plant at Chicago (R. 184-185). The Osborne line manufactured in New York and the Champion line in Springfield, Ohio, were not favorably located to serve the great grain-growing sections of the West. (R. 186.)

The Federal Trade Commission in its report (Pet. Ex. 90) found a considerable disparity in the production costs of the lines to be sold and those to be retained, and its figures were offered in evidence through the witness Bennett as hereinafter described. The following table, taken from the report, gives the factory costs of the several lines of binders of the International Harvester Company in 1918, as reported by the Company:

Factory costs¹ of domestic harvesting machines made by the International Harvester Co. in 1918, as reported by the company

Brand	Grain binder, 6-foot, with bundle carriers	Grain binder, 8-foot, with bundle carriers	Mower	Rake	Corn binder with bundle carrier
Champion	\$120.82		\$50.97	\$22.83	
Osborne	121.67	\$140.19	44.74	23.67	\$112.00
Milwaukee ²	106.00	124.46	26.95	19.89	96.56
McCormick	101.16	116.05	26.26	20.52	91.11
Deering	66.27	115.58	29.09	21.38	101.39
Excess cost—Champion over Deering ³	28.45		11.29	1.45	
Excess cost—Osborne over Deering	28.20	24.61	5.05	2.24	10.67

¹ Do not include selling expense.

² Five-foot size.

³ Manufactured at McCormick plant.

⁴ Excess cost of 8-foot Champion binder over 6-foot Deering binder.

Mr. Legge (R. 184) expressly admitted that such disparity existed. He stated that the higher cost of the Osborne, Milwaukee, and Champion machines was a question as to the relation of product to the investment and facilities for producing it. Regarding the Milwaukee line, he added, "we found the trade too small to make the proposition attractive to us." This difference in cost disappeared, according to Mr. Legge, when the line was transferred to the McCormick plant, "since which time the cost of the Milwaukee goods and the McCormick have been practically identical."⁵

The high cost of the Osborne line, Mr. Legge claimed, was due to the fact that the production of heavy machines was continued at the Osborne plant to meet the requirements of the foreign trade. (R. 185.) The contract for the sale of that line to the Emerson-Brantingham Company having called for a reduction in the weight of the machine, such reduction was made, with consequent reduction in cost. (R. 185.) This was in 1920 when the International was itself producing machines for the Emerson-Brantingham Company and was operating at 75 per cent of capacity. (R. 185.)

As regards the Champion line, Mr. Legge admitted that their experience with it had been the most unhappy of any of the lines. (R. 185.) It was of faulty design when acquired by the Inter-

⁵Apparently, the only way to put the purchaser of the Milwaukee line on anything like an equality in the matter of cost is to transfer to it the McCormick plant and line also.

national Harvester Company. The first attempt to rebuild it was a complete failure (R. 186). Its production next was diverted to the foreign field, more especially South American, and this venture came to nought. "As a result of all this, we had a very low volume of business at the Champion plant." (R. 186.) By the time the line was sold the harvesters and mowers had been twice rebuilt "with some rebuilding on a few features." (R. 186.)

See also the testimony of McKinstry, president of the America Company. (R. 170-177.)

These unhappy experiences were related not only in explanation of the high costs obtaining at the Champion factory, but also to account for the falling off in the sales of this line. Whether the result of misfortune or design, the sales of the three lines in question had gradually dwindled since 1902. Thus the sales of Champion binders, which amounted to 10.6 per cent of the total sales of the company in 1902, had declined to 0.7 per cent in 1918. The sales of Osborne binders which in 1902 amounted to 6.1 per cent of the total had fallen to 2.1 per cent. And the sales of Milwaukee binders which in 1902 constituted 9.6 per cent of the total had melted away to 1.8 per cent in 1918, and in 1923, just preceding the sale of this line to the Moline Plow Company, to 0.1 per cent. Similar declines are to be noted in the sale of these lines in practically every class of harvesting machinery.

These losses, as a matter of course, are accompanied by corresponding gains for the McCormick and Deering lines, as is demonstrated clearly by the statements showing sales of binders, reapers, etc., in Appendix A of this brief, *infra*, pp. 137-141.

III

The court erred in holding that since the entry of the decree in 1918 competitive conditions were free and untrammelled and that powerful and successful competitors contested the field

A. *Machines sold by purchasers during test period built by International Harvester Co.*

Had the three contracts for the sale of the Osborne, Champion, and Milwaukee lines followed the intendment of the decree and provided for the sale of the plants, the purchasers might have launched at once into the manufacture of harvesting machines as competitors. The contracts, however, which are substantially alike and provide for the sale of the trade names, good will, etc., for the nominal consideration of one dollar, and for the sale of certain equipment and machinery at specified prices, looked merely to a disposition of the lines, i. e., the trade names, without the plants, and provided, in the cases of the Osborne and Champion, that the International Harvester Company should manufacture all machines required by the purchasers for the ensuing (the 1919) selling season. In the Milwaukee contract it was provided that the International Harvester Company would

supply the requirements of the purchaser for the 1924 and 1925 seasons.

As shown by the testimony of Mr. C. S. Brantingham, president of the Emerson-Brantingham Company, to which the Osborne line was sold before the entry of the decree, the International not only furnished completed Osborne machines for the 1919 season, but also for the 1920, 1921, and 1922 seasons, and even furnished a few reapers in 1923. (Pet. Ex. 15, R. 420.) The number of machines so furnished by the International Harvester Company greatly exceeded the number sold by the Emerson-Brantingham Company during those years. (Compare Pet. Ex. 15 (R. 420), with Pet. Ex. 10 (R. 405); also tables contained in Appendix B, *infra*, pp. 146-156.) Indeed so great was the carry-over that it is extremely doubtful whether up to the time of the filing of the supplemental petition the Emerson-Brantingham Company had sold a single grain binder not manufactured by the International Harvester Company.

The Emerson-Brantingham Company had long been a manufacturer of mowers and rakes. The Emerson-Brantingham rake has been discontinued in favor of the Osborne (Brantingham, R. 81), and the Standard mower, a machine of exceptional merit (White, I Old Rec. 352), if not discontinued, will have to share sales effort with the Osborne. Therefore, so far as those implements are concerned, the result of the sale of the Osborne line was simply to supplant one brand with another.

The principal machines added to the Emerson-Brantingham line by the transaction were grain and corn binders, and attention is called to a most significant fact. Pet. Ex. 15 (R. 420), including domestic inventories and excluding foreign inventories, shows that the Emerson-Brantingham Company received from the International Harvester Company from 1919 to 1923, inclusive, a total of 12,870 grain binders and during the same period sold in the United States a total of 11,102 grain binders (Pet. Ex. 10, R. 405).

Hence, during the five-year period, which includes the entire test period, the Emerson-Brantingham Company purchased from the International Harvester Company 1,768 more grain binders than it sold in the domestic trade. These are the figures sworn to by Mr. Brantingham, president of the company, but as they are almost wholly out of balance with figures submitted by Reay, Comptroller of the International Harvester Company (Pet. Ex. 66, p. 1, R. 476), further facts are offered. Mr. Reay's statement gives not the date of sale to the Emerson-Brantingham Company but the date of manufacture, and actually shows a larger number of machines than was shown by Mr. Brantingham. Mr. Reay, however, has classified them as domestic and foreign to imply that machines of the latter class were made for export only, although he admitted on examination that there was no fundamental difference in the machines—merely a matter

of attachments (R. 78). That this implication is erroneous is capable of demonstration. By taking the total number of so-called domestic machines shown by Reay up to and including 1921 (when, according to him, manufacture ceased), the figure obtained is 8,844, whereas the Emerson-Brantingham sales for those years total 9,269, or 425 more than Reay shows, notwithstanding that up to that time Emerson-Brantingham confessedly had not manufactured a complete machine.

By applying the same test to corn binders, a result but slightly different is obtained. Thus during the five years in question 3,256 corn binders were sold and of these 2,881—all but 375—were built by the International Harvester Company.

Finally, the Osborne line, unlike the McCormick and Deering, contained no headers or push binders, and consequently the Emerson-Brantingham Company entered upon its career minus these important machines.

The same situation applies to the sale of the Champion line. That line was transplanted from an already unfavorable situation at Springfield to a still more unfavorable location at Louisville. A comparison of Pet. Ex. 21 (R. 428) with Pet. Ex. 24 (R. 428) indicates that practically the entire requirements of the Avery Company during the test period were supplied by the International Harvester Company. Moreover, at the time the contract was signed, the Avery Company was selling

hay tools—mowers and rakes—as jobber for the Thomas Manufacturing Company. (Taylor, R. 88.) A substantial percentage of the production of the Thomas Company was marketed in this way, and this outlet was closed as a result of the transaction. (Thomas, R. 115.)

B. Purchasers were mere sales agents for the International Harvester Co.

The net result of these sales of trade names *during the test period* was to enlarge the scope of the defendant's business by constituting two of its competitors sales agents for its products. Although the purchasers claim to be manufacturing these lines they are really assembling them largely from parts procured from the International Harvester Company and other suppliers (R. 82-83; 88-89). A still more significant result of the transactions is that while the contract in terms contemplated the sale of the machines with generous extensions of credit, the truth is that a large part of these machines were never paid for, and a debtor and creditor relationship was established which will continue for some time, and which does not differ widely from the relationship of agency. Petitioner's Exhibits 86 and 87, received in camera at the request of defendants' counsel (R. 80), contain a summary of the accounts between the International and the Emerson-Brantingham and Avery Companies. It is unnecessary to remind the Court that such a relationship often affords the creditor an

influence in and a control over the affairs of the debtor equal to a majority stock ownership. The evidence (Pet. Ex. 86) shows that the Emerson-Brantingham Company owed the International Harvester Company \$1,625,471.04, and that of this sum \$737,027.07 is evidenced by notes and \$888,-443.97 is carried on open account without interest.

With respect to the sale of the Champion line to B. F. Avery & Company, that line lacked the very important item of corn binders, production of Champion corn binders having been discontinued by the International Harvester Company in 1915 (another alteration of the *status quo* pending the suit). Comparison of Pet. Ex. 24 (R. 428), showing the total number of Champion binders furnished by the International Harvester Company, with Pet. Ex. 21 (R. 428), showing the domestic sales of Avery for the five-year period 1919-1923, indicates that Avery sold 4,195 grain binders, of which 3,283—or all but 912—were manufactured by the International Harvester Company.

Moreover, Mr. Henry L. Taylor, vice president and sales manager of Avery Company, gave the following testimony showing that even to that date that company was merely assembling machines largely from parts furnished by the International Harvester Company (R. 88):

All of these (harvesting machines) are not made entirely from parts manufactured by Avery & Sons.

Again, after testifying that his company bought malleables, he stated:

We buy malleable castings from the International Harvester Company, and I am inclined to think rake teeth. * * * Repair parts purchased by Avery & Sons from the International Harvester Company go into current machines. There are many malleables on a binder and mower and different tools, and it would be impossible to have them all in mind.

C. Comparison of machinery, etc., sold by International Harvester Company with the invested capital of that company

The amount of business separated from the International Harvester Company as a result of the decree has been shown to be negligible. An examination of the assets is equally interesting. Pet. Ex. 7 (R. 400) shows that the total amount of machinery and other plant equipment of the Osborne line sold to Emerson-Brantingham Company was \$150,159.10, and that the total of machinery and equipment of the Champion line sold to B. F. Avery & Sons was \$95,711.90, or a grand total of \$245,870.10, a trifle more than one-tenth of one per cent of the \$238,903,066 of invested capital of the International Harvester Company in 1918, as reported by the Federal Trade Commission (Pet. Ex. 90.)

D. Not only did competition not increase during the test period, but many well-established companies retired from the harvester business

In 1911, as shown by the evidence on the original petition, the International Harvester Company had twenty competitors in the harvester line. (Supp. Pet. 34, Ans. 11, R. 19; 66.) The largest of these competitors, the Acme Company, sold in that year 7,839 grain binders, 6,092 mowers, and 8,888 rakes, and enjoyed 4.85 per cent of the total business of the United States in harvesting machines. Another important competitor was the Walter A. Wood Company, one of the oldest manufacturers of harvesting machines in the United States. Another was the Adriance-Platt Company, which was taken over by the Moline Plow Company before the testimony on the original petition was closed. Among the others included in the list were the Richardson Manufacturing Company, Independent Harvester Company, Bateman Manufacturing Company, Plattner Company, Seiberling-Miller Company, Belcher & Taylor Company, and Eureka Mower Company. All of these since have passed away, eight of them since the decree of November 2, 1918, was entered.

Much was made of these competitors on the hearing on the original petition. Counsel for the defense put them forward as showing the existence of strong and vigorous competition. The dissenting judge in his opinion enumerated the companies with their capital stocks and output. But they are gone, and of the twenty competitors in

1920 only eight remain—Deere, Johnston (now Massey-Harris), Emerson-Brantingham, Thomas, Minnesota Prison, C. G. Allen Company, Sears-Roebuck, Messenger Company.

The Walter A. Wood Company, organized in 1852, ceased manufacturing harvesting machines in the spring of 1923. (McLean, R. 92.) A plan of reorganization has been worked out for the company which does not contemplate the resumption of the manufacture of harvesting implements. (R. 94.) The company had no sources of raw materials, as has the International Company, but was compelled to follow the latter's prices. (R. 92.)

The Independent Harvester Company was placed in the hands of a receiver in 1917 (Steward, R. 94) and was operated by the receiver until May, 1920, when the properties were sold to a syndicate (id. 94). Manufacturing operations were continued for only a short time thereafter, when the physical properties were sold to the Moline Plow Company. (id. 95.)

The Acme Company, the International's largest competitor, described in the dissenting opinion as having a growing and successful business, suspended the manufacture of completed machines in 1919, although it sold a few machines in 1920, 1921, and 1922, which were assembled from parts on hand. (Jacoby, R. 98.) When the evidence was closed the properties were in the hands of a receiver

for liquidation and an order of sale was expected. (Frazier, R. 122.)

The Moline Plow Company, which acquired the Adriance-Platt in 1912 (Peek, R. 103), discontinued the manufacture of harvesting machines in 1923 (id, 103). The company never operated the Independent plant and has offered that plant for sale. (Id. 104.)

In 1920, Bateman and Companies was formed as a consolidation of the Bateman Manufacturing Company, McWhorter Manufacturing Company, Cutaway Harrow Company, Richardson Manufacturing Company, Belcher-Taylor Agricultural Tool Company, and Duane H. Nash, Inc. Receivership proceedings were instituted against the concern in March, 1923, and the estate is being liquidated and wound up. (Nash, R. 123.)

The Eureka Mower Company gave up the manufacture of mowers in 1919. (Newcomer, R. 127.) The Sieberling-Miller Company discontinued the harvester line in 1917. (Miller, R. 127.) The Plattner Implement Company was removed from Denver to Lincoln, Nebraska, and became known, first, as the Plattner-Yale Company, and later as the Yale-Hopewell Company. (Stone, R. 162.) The concern discontinued the manufacture of hay tools in 1921 and is bankrupt. (R. 163.)

It must be borne in mind that the time in which to judge of the effect of the decree has been ex-

tended far beyond the hopes or expectations of the negotiators of the decree. The war really ended with the signing of the Armistice a few days after the entry of the decree, but for reasons with which all are familiar, it continued in legal contemplation for a period of three years thereafter, so that defendants have enjoyed a full three years' period of grace in addition to the test period prescribed by the decree. Not only has the decree not created any substantial new competition, but competition has actually declined, and the International Harvester Company has increased substantially its percentage of the total harvesting machine business. To prove this the Government called all manufacturers of the several kinds of harvesting machines listed in a standard directory of implement manufacturers and had them produce their sales for the years 1919 to 1923, inclusive. The results are shown in the tables appearing in Appendix B of this brief, *infra*, pp. 146-156. In compiling these tables, the Government endeavored not only to be just, but to be generous; and to that end included Emerson-Brantingham Company and Avery as independent competitors, when, as already explained, they were merely selling the machines of the International Harvester Company.

It is further to be borne in mind that the statistics for the years 1918-1923 include the sales of a number of companies, such as the Acme, the Walter A. Wood, and the Moline Plow Company, after they

had definitely abandoned the business, and were merely liquidating machines on hand.

Resolving all these in favor of the defendants, it nevertheless appears that the International Harvester Company's percentage of business increased to 66.6 in 1919, fell back to 61.8 in 1920 and to 58.9 in 1921, leaped to 67.7 in 1922, and in 1923 was about the same as in 1918—64.1.

The generosity of the Government appears not to have been appreciated, and defendants, in their brief in the lower court, stated that "most of these figures are wholly inaccurate." Most, however, is an elastic term, and no fault was found with the figures as to grain binders, the keystone of the harvester line, or corn binders, the next most important implement, or as to headers and push binders, or reapers, or harvester threshers, so that five out of nine columns came through unscathed by defendants' ready criticism. As to mowers, rakes, and tedders, if the Government, as implied, had rested its case on an inadequate canvass of competitors, it clearly was the right and duty of the defendants to call such neglected manufacturers, and they did not call them, and the Government could not call them in rebuttal.

The defendants offer some evidence relative to small concerns manufacturing special devices, such as mowing attachments for tractors (Hoover, R. 276), ensilage harvesters (Ronning, R. 274-275),

and relative to a small concern manufacturing wooden hay rakes which is ambitious to enter the harvester line and to that end has acquired the plant of the bankrupt Acme Company (Nelson, R. 273). Examination of this testimony reveals that these one-line concerns can have no appreciable effect upon competitive conditions; indeed, no less a person than Mr. Legge has pronounced their doom. He testified that the harvester business can no longer be carried on as a separate, independent business, because of the increased distributing expense. (R. 206.)

IV

Defendants have such advantages as to be able to dominate completely the manufacture and sale of harvesting machines and their appurtenances, and to dictate prices, and they do exercise such domination

1. THIS DOMINANCE IS SHOWN BY CONTRASTING THE INVESTMENT AND RETURNS OF THE INTERNATIONAL HARVESTER COMPANY WITH THE INVESTMENT AND RETURNS OF ITS COMPETITORS

A. The Federal Trade Commission report

The Federal Trade Commission having included in its report to Congress figures showing the investments, returns, and costs of the International Harvester Company and twenty-five other implement companies for 1918, the year in which the decree was entered, and having based its finding as to the inadequacy of the decree largely upon such figures, the Government offered in evidence that report. (Pet. Ex. (S) 90.)

In the lower court defendants complained "that the Government has apparently discovered a new and easy method of proof, free from the annoyances of cross-examination, by introducing the Commission's own report based upon its own *ex parte* investigation in proof of its own charges." Mr. Bennett who prepared the report was cross-examined over 16 pages of the record by two of defendant's counsel.

The Commission made its investigation at the behest of Congress and in accordance with its duty as prescribed by the Federal Trade Commission Act (c. 311, Stat. 717), and this Court saw fit to create an enlightened precedent in *Chicago Board of Trade v. Olsen* (262 U. S. 1) by citing and quoting from the Commission's report on Wheat Prices in its statement of that case.

To prove the material portions of the report the Government produced Mr. Charles E. Bennett, a distinguished accountant and formerly chief accountant of the Federal Trade Commission, under whose direction the work was done, and he testified fully as to how the Commission's investigation was made and the report prepared. (R. 131-159.) Counsel took no exception to his testimony on the ground of fairness or frankness and it shows the great care with which the report was compiled.'

'(Mr. BENNETT.) A request was made of the manufacturers listed on page 87 to send to the Commission their trade profit and loss accounts and balance sheets for the

The profits as found by the Federal Trade Commission were based upon the reported total earnings of the International Harvester Company with foreign losses and certain other items eliminated. (R. 153-154.)

In order to prepare a more elaborate review of its profits the company was requested to allocate its capital and earnings, showing domestic capital and earnings on domestic business separately from that of foreign. This allocation is more fully set out in Pet. Exhibits 137, 138, 139. (R. 562-567.)

The net operating income of the International Harvester Company, as a whole, after charging interest, the invested capital excluding borrowed money and outside investments, and the rate of re-

years 1913 to 1918. These were carefully gone over by examiners, and examiners were sent to the various manufacturers to gather additional information and facts arising from the examination of these financial returns, and, in addition, four questionnaires were sent to all of them asking for a definite statement of facts with regard to certain questions arising out of the examination of those returns. From their replies this chapter was written.

Mr. MYERS. The information embodied in the tables in that chapter was all taken from the books and records of the companies named or indicated?

Mr. LINDABURY. Defendants object to the question on the ground that it is irrelevant, immaterial, and calls for hearsay, and is not the best evidence.

(Mr. BENNETT.) All these figures were taken from the returns of the manufacturers and from investigation of the books and accounts of the manufacturers. This work of gathering the information was altogether carried on under my direction. (R. 132.)

turn for 1916, 1917, and 1918 are all given on pages 93-95 of the Federal Trade Commission report. These figures follow:

Year	Income	Capital	Return rate, Inter- national (per cent)	Return rate, 25 com- panies (per cent)
1916	\$20,235,126	\$157,646,095	11.70	11.02
1917	40,909,411	336,595,663	12.42	12.40
1918	47,596,175	221,579,261	21.50	21.10

The net results for stockholders and other investors from the implement business 1916-1918 are given on pages 93-95 of the Federal Trade Commission report and are as follows:

Year	Net operating income before charging interest	Capital, includ- ing borrowings and excluding outside investments	Return rate, Inter- national (per cent)	Return rate, 25 com- panies (per cent)
1916	\$24,606,371	\$254,685,710	9.72	9.72
1917	41,663,721	338,177,374	12.33	12.33
1918	46,611,952	236,903,095	19.70	19.70

For the purpose of showing the rate of profits of smaller companies as compared to the larger companies the following table is reproduced from the report of the Federal Trade Commission (Report, p. 908) showing investment, including borrowings, but excluding outside investments, net operating income before charging interest, and rate of return on investments by groups for 26 farm implements, years 1915-1918, inclusive:

Groups of investment companies	Number of com- panies	Results for stockholders and other investors from the investment business only				Results for stockholders and other investors from the entire business			
		Invested capi- tal, including borrowings, but excluding outside funds	Percent- age of total invest- ment	Net oper- ating income before char- ging interest	Percent- age of total oper- ating in- come to invested capital	Invested capi- tal, including borrowings, but excluding outside funds	Percent- age of total invest- ment	Net income before char- ging interest	Ratio of net in- come to invest- ment (per cent)
1921									
\$1 to \$500,000	4	\$1,438,410	0.36	\$100,120	7.32	\$1,431,843	0.35	\$48,740	4.11
\$500,000 to \$1,000,000	2	3,078,710	91	367,190	9.44	3,086,618	95	253,400	6.40
\$1,000,000 to \$5,000,000	9	21,405,620	5.23	1,945,800	1.41	22,933,350	5.62	144,751	1.50
\$5,000,000 to \$12,000,000	4	36,006,020	9.10	1,447,022	3.96	36,744,635	9.46	600,637	2.41
\$12,000,000 to \$17,000,000	3	108,042,230	26.90	5,787,360	5.77	103,065,072	25.25	5,301,205	5.70
Total, 20 companies		160,107,120	60.36	8,013,131	4.91	167,817,120	41.16	6,400,142	4.13
International Harvester Co.	1	201,383,740	50.64	18,730,612	7.64	200,305,090	50.86	18,913,630	8.20
Total, 21 companies		462,490,860	100.00	26,743,743	5.85	468,122,210	100.00	25,313,772	5.50
1922									
\$1 to \$500,000	4	1,508,320	30	186,500	13.16	1,525,180	30	128,720	8.10
\$500,000 to \$1,000,000	2	2,580,930	92	110,112	14.43	2,692,182	91	303,444	10.64
\$1,000,000 to \$5,000,000	9	21,108,187	5.43	1,212,740	5.79	22,633,452	5.00	1,130,714	5.06
\$5,000,000 to \$12,000,000	4	34,962,080	8.94	2,611,062	7.43	35,800,643	8.85	2,100,118	6.00
\$12,000,000 to \$17,000,000	3	94,652,070	24.20	7,021,300	8.17	97,783,064	24.71	7,437,003	7.60
Total, 20 companies		150,772,710	20.96	12,351,760	8.08	160,602,720	40.13	11,101,005	6.97
International Harvester Co.	1	204,005,720	60.94	24,850,377	10.62	211,354,063	56.47	27,080,617	11.46
Total, 21 companies		354,778,430	100.00	37,202,137	9.10	372,956,783	100.00	38,211,622	9.00

1917

\$1 to \$500,000	4	1,088,380	.45	798,832	17.45	1,797,701	.43	167,424	8.65
\$500,000 to \$1,000,000	1	3,718,780	1.00	960,373	25.89	3,739,067	.45	711,569	18.08
\$1,000,000 to \$5,000,000	9	20,718,130	5.54	2,490,424	12.02	22,008,769	5.63	2,202,312	10.19
\$5,000,000 to \$12,000,000	4	33,788,880	9.04	4,247,639	12.17	33,936,311	8.64	3,521,855	10.39
\$12,000,000 to \$17,000,000	3	87,472,559	23.41	11,345,439	12.97	90,558,035	23.05	10,863,590	12.90
Total, 28 companies		167,378,964	39.44	19,214,687	12.13	152,023,792	39.70	17,498,959	11.31
Interest of United Harvester Co.	1	226,377,374	60.56	42,963,221	18.59	240,791,287	61.30	41,260,908	17.15
Total, 29 companies		273,656,239	100.00	61,467,909	15.43	262,817,669	100.00	58,760,767	14.97

1918

\$1 to \$500,000	6	1,720,352	.45	415,987	24.18	1,739,734	.43	280,559	16.13
\$500,000 to \$1,000,000	2	2,079,537	.54	823,361	39.59	2,079,537	.51	593,272	28.53
\$1,000,000 to \$5,000,000	9	18,490,017	4.79	4,646,979	25.15	19,943,060	4.99	4,300,221	21.96
\$5,000,000 to \$12,000,000	4	33,319,974	9.14	8,731,314	24.78	35,556,246	8.71	7,972,311	22.45
\$12,000,000 to \$17,000,000	3	98,805,879	25.36	15,262,689	17.09	93,006,158	22.83	12,970,100	13.94
Total, 23 companies		167,305,699	39.17	30,403,422	20.34	152,333,649	37.37	26,016,463	17.08
Interest of United Harvester Co.	1	258,933,066	61.83	46,811,322	19.59	255,333,690	62.63	45,000,200	17.95
Total, 24 companies		366,439,725	100.00	76,815,255	19.65	407,667,335	100.00	71,025,663	17.37

¹ In 1916, 1917, and 1918 the investment of one company in this group was slightly in excess of \$500,000.

² In 1917 and 1918 the investment of one company in this group was slightly in excess of \$1,000,000.

³ In 1915, 1916, and 1917 the investment of one company in this group was slightly less than \$1,000,000.

⁴ Four companies omitted in 1918.

This table shows that in 1915 the invested capital of the International Harvester Company represented 59.44 per cent of the total for 26 companies, practically the entire agricultural implement industry. In this connection it should be borne in mind that the International Harvester Company's strongest competitors are engaged primarily in the tillage line, *supra*, pp. 44-46, so that these figures give an inadequate picture of its primacy in the harvester line—the Harvester Company against the world. In 1916 the International's percentage of the total was 60.04, in 1917 its percentage was 60.56, and in 1918 its percentage was 61.83. It is regrettable that like figures are not available for all companies for the years included in the test period, when competitors were going out of business and relinquishing their trade to the International, which was forging steadily ahead.

The report of the Federal Trade Commission is based on the records of the company except that it eliminates the following items:

(1) Reserves which are not allocated to some specific asset and not deductible in computing net income.

(2) Losses on foreign business.

(3) Elimination of basic inventory value basis.

It also eliminates other items of lesser importance as to both income and capital which apparently have no perceptible effect on the return rate.

As testified by Bennett, chief accountant for the Federal Trade Commission (see *infra*, pp. 75-77),

the Commission disallowed these items contained in the International Company's returns in order to make the returns of that company comparable with the returns of other reporting companies and to bring them into conformity with correct accounting practices.

It may be questioned whether the values of the Commission's figures as showing the dominance of the International Harvester Company in 1918, when the decree was entered, was sufficient to justify the controversy that arose concerning the corrections of those figures and the propriety of the Commission's action in revising the figures submitted by the company.

However, the attack on the Commission's figures having been made, the Government could not abandon them, but was constrained to defend them, even though such action involved a somewhat lengthy journey into a field of doubtful relevancy.

B. As to the corrections of the Commission's report

Taking up first the question of reserves, it appears from a review of the annual reports of the company that numerous and excessive reserves were set up as a charge against its surplus at the end of each year.

As an illustration: The report for 1918 shows a reserve of \$2,000,000 set up as an additional charge against earnings for collection expenses.

In 1917 the additional reserve set up to cover collection expenses amounted to \$1,000,000.

The report for 1916 shows a contingent reserve set up against surplus of \$2,500,000.

The possibility of any part of this reserve becoming a liability or charge against the earnings of the company is too remote for serious consideration.

In arriving at the capital invested upon which a fair return might be realized the Commission eliminated investments of the company in bonds, stocks, and other securities not directly related to the conduct of the harvester business.

The profits on domestic business as allocated by the company as shown in Exhibits P (S) 137-139 (R. 562-567), and as computed by the Government are as follows:

Year	Domestic capital	Income after paying taxes and interest	Return rate (per cent)
1916.....	\$100,000,000	\$14,494,045	14.49
1917.....	115,000,000	21,296,947	18.52
1918.....	126,000,000	23,794,543	20.42
1919.....	139,000,000	22,493,517	18.29

The foregoing rate of return is based upon total domestic capital, including investments in bonds and stocks, which are unrelated securities and should be eliminated.

These investments were as follows:

1916.....	\$13,254,902
1917.....	15,191,670
1918.....	11,737,506
1919.....	7,592,123

By allocating these investments between foreign and domestic capital and deducting the amounts

from the total, the capital invested in the harvesting-machine business is obtained.

By dividing the capital invested and used to manufacture implements into the operative income before and after deducting taxes, the rate of return on capital invested in the manufacture of harvesting machines for domestic trade in the United States is obtained.

These figures, which may be compared with the Commission's figures, *supra*, p. 51, are as follows:

Year	Domestic capital employed in the manufacturing business	Operative income, manufacturing, before deducting taxes	Rate of return before paying Federal taxes (per cent)	Operative income, manufacturing, after paying Federal taxes	Rate of return after paying Federal taxes (per cent)
	(1)	(2)	(3)	(4)	(5)
1916.....	\$165,000,516	\$113,062,126	13.68	\$12,713,341	13.26
1917.....	150,900,540	22,861,264	21.31	19,152,706	18.07
1918.....	118,640,527	31,909,902	26.97	24,867,826	20.96
1919.....	132,973,052	26,419,635	19.87	21,196,873	15.94

The total invested capital herein shown is substantially the same as the capital and surplus added in the printed annual reports of the company.

There does not appear to have been any increase in the book value of the assets by reappraisal since the organization of the company.

Whenever it appears that the real value of the assets of the company is more than the book value, less depreciation reserves, it is persuasive evidence that the company has been charging off too much for depreciation.

Whenever a company charges off more for depreciation as an expense than the actual deprecia-

tion it has the effect of showing a decreased earning upon which taxes are to be paid, and a decreased earning upon which a fair return to investors is computed, and a corresponding decrease in the rate of return, which does not as a matter of fact exist.

Further, there is no interest included in what is termed operative income as heretofore shown. The allocation by the company of the interest received and paid between domestic and foreign business appears to have practically eliminated the question of interest charges.

The interest account as a whole on domestic business shows a net interest income.

From the fact that the annual reports of the company do not give any details concerning the source of interest income it has been impossible to allocate the net interest income between what should be the income on outside investments and the income received from bank balances, bills receivable, and other items incident to the conduct of the harvester business.

Estimating the net interest income on all bonds and other securities held by the company as shown in the printed annual reports at an average of 4 $\frac{3}{4}$ per cent, and assuming all said bonds are outside and unrelated securities, the net investment income would be as follows:

1916	\$929, 611
1917	721, 004
1918	557, 535
1919	390, 151

The above amounts less the loss of \$482,460 on Liberty Bonds shown in the statement for 1918 represents the net estimated investment income for those years exclusive of taxes or other expense incident to the handling of the funds.

The difference between the net investment income above shown and the net credit balance to interest account on domestic business, 1916-1919, inclusive, as shown in the statement is as follows:

1916.....	\$1,151,063
1917.....	1,424,634
1918.....	771,342
1919.....	925,488

While the above items have not been included in the earnings herein shown as reflected in the operative income, or in the earning rate, the amounts, as a matter of fact, should be treated as an interest income for each of the years indicated arising from a miscellaneous earning in the conduct of that business. This would necessarily increase the rate of return on capital employed in the conduct of the harvester business.

It is not apparent that the company has ever kept an investment-income account to which should be charged investment expenses. This would have resulted in a decrease in the expense incident to the conduct of the harvester business.

Neither does it appear that any part of executive salaries or other administrative expense has been allocated and charged to investment expense.

C. *The question of inventories, deductions for foreign losses, charges for depletion of iron ore properties, etc.*

The chief criticism of the Federal Trade Commission related to the method used by the International Harvester Company in figuring its inventories, which constitute an important factor in computing profits and closing the books for the year.

At the end of each year an inventory is taken of all goods, wares, and merchandise, finished and unfinished, pertaining to the manufacturing business, actually on hand at the end of the year, and sales, merchandise, or other proper accounts are credited with the amount of such inventory. Therefore, the net profits of a company can be reduced or inflated to the extent that an inadequate and incorrect inventory is made up.

The method followed by the Federal Trade Commission was to value inventories at *cost or market*, whichever was lower. This is the accepted rule of accounting and business practice and is a combination of the cost basis, heretofore used with great unanimity, and the market basis, heretofore used only by comparatively few; and the combination has been adopted by the Bureau of Internal Revenue. (Reg. 65, Income Tax Rev. Act 1924, Art. 1612, p. 287.)

The International Harvester Company, however, compiled its inventories according to what it termed

the "basic inventory principle." The commission in its report revised the Harvester Companies' figures according to the cost or market (whichever was lower) method, and these revisions gave rise to much controversy.

Mr. Bennett, the Government's witness, testified (R. 139-140) :

There was a difference between the company's and the commission's figures in respect to inventories of raw materials and finished product, because commencing with the year 1917 the International Harvester Company priced their inventories upon what they were pleased to call the basic inventory principle. That principle was this: It was the contention of the Harvester Company that they should not be compelled to price their inventory at cost or market, whichever was the lowest, but on a pre-war normal basis, as far as quantities and values were concerned, equivalent to the inventory they had on hand at that time; balance of the inventory to be priced at current cost. The Commission did not agree with them, one reason being that there were only two companies that used that basis to price inventories. Therefore the Harvester Company's costs were revised by the Commission after consulting the Company's cost accountants, to show what those costs would have been had the inventory been taken on the same basis as taken prior to 1917. Such revision had the effect of reducing the Harvester Company's costs for 1918. According to

such revision their inventory was understated by six and one-half million dollars in 1917 and by approximately ten and one-half million dollars in 1918, making a net difference for the year 1918 of approximately four million dollars.

Mr. Reay, Comptroller of the Harvester Company, explained that the "basic inventory plan consisted in carrying a minimum quantity of inventory through this period of rapidly inflating and deflating markets on a normal basis of costs." (R. 226.) And he stated that (R. 226):

We have, however, made a calculation for each of those six years to show what the earnings would have been on the cost or market method of inventory valuation. The total profits of the six-year period came to the same figure on both methods.

Because this controversy is considered to be of doubtful relevancy and of too slight importance to be treated at length in the body of this brief, further discussion of the two methods of inventorying has been relegated to Appendix C, pages 156-162.

Another variation in methods used by the Government and the International Harvester Company relates to funds set aside for foreign business. The Federal Trade Commission considered that the domestic commerce of the International Harvester Company should not be burdened with losses on local or foreign unrelated investments or losses on foreign commerce in considering the cost to domestic consumers.

The annual report* of the Harvester Company for 1918 (p. 4) indicates that in the past the company has entertained the same view, although at the time the Commission was making its investigation the company had changed its practice. This subject also is treated more at length in Appendix D, pages 162-165.

A further difference of opinion between the Federal Trade Commission and the International Harvester Company was caused by a depreciation charge against net earnings for ore and timber extinguishment. Although the company owns its timber lands, it does not own its iron-ore lands; therefore the Commission objected to the charge for iron-ore extinguishment. Further consideration is given to this subject in Appendix E, pages 166-168.

D. Earnings reflected by increases in invested capital and dividends paid

In addition to the extraordinary profits shown herein by accounts and by years and the large rate of return on domestic capital the published reports of the company reflect conditions little less prosperous when considered as a whole.

On January 1, 1903, the company had an invested capital of \$120,000,000. On January 1, 1923, its invested capital had increased to \$210,343,976,

*Annual report not included in record, but sent up to Supreme Court with record for reference.

representing an increase of \$90,343,976, after paying out cash dividends as follows:

Cash dividends on preferred stock.....	\$67,231,346
Cash dividends on common stock.....	67,310,700
Total cash dividends paid.....	134,542,052

In addition, the company has incurred and paid losses on foreign investments as follows:

1917.....	\$10,436,825
1918.....	10,478,000
1919.....	7,403,034
Total.....	28,317,859

(See published annual reports.)

In addition, the published report for 1922 shows that the company has appropriated from its surplus the following reserves:

Special maintenance.....	\$2,024,308
Collection expense.....	2,000,000
Fire insurance fund.....	7,747,873
Pension fund.....	6,762,613
Industrial accident fund.....	950,000
Contingent fund.....	3,250,000
Total.....	23,334,794

The earning rate on preferred stock is limited to 7 per cent per annum. The surplus accretions and reserves herein indicated are available for dividends to common stockholders.

The common stock outstanding January 1, 1923, amounted to \$97,918,404.

The surplus on January 1, 1923, exclusive of the special reserves of \$23,334,794, amounted to \$52,201,672.

It will be observed from the statement in Appendix F showing dividends paid that the company has paid cash dividends of 7 per cent on its preferred

stock from 1907 to 1922, inclusive, and from 3 to 7 per cent cash dividends on its common stock, 1903-1922, inclusive, and has surplus accretions exclusive of any reserves of 53.3 per cent available for dividends to common stockholders.

In addition to the cash dividends paid this statement also shows that the company paid stock dividends on common stock as follows:

1919, 33½ per cent, or.....	\$20,000,000
1920, September 15, 12½ per cent.....	10,000,000
1921, January 25, 2 per cent.....	\$1,800,000
July 25, 2 per cent.....	1,845,414
	3,645,414
1922, January 25, 2 per cent.....	1,882,322
July 25, 2 per cent.....	1,919,908
	3,802,290
Total stock dividends paid.....	37,447,704

Detailed statements indicating the growth of the company as reflected in its surplus accretions and in cash and stock dividends paid are given in Appendix F, *infra*, 168.

E. *This dominance is shown by the enormous profits realized by the International Harvester Company from sales of surplus raw materials and side lines*

Government Exhibits P (S) 74-84, inclusive (R. 484-488), show the per cent of profit to cost and per cent of profit to sales on pig iron, iron ore, lumber, coal, coke, finished steel products, and certain other items entering into the business of the International Harvester Company.

These profits were computed from Exhibits P (S) 68, 69, 70, and 71 (R. 479-482), which were

prepared by Mr. Wm. M. Reay, Comptroller of the Company.

The exhibits expressly show that the profits indicated are before deducting interest and Federal taxes.

On page 222 of the record Mr. Reay testified that "there should be deducted interest, Federal taxes, and also a portion of the general administrative expense" in order to arrive at the net profits.

With a view of ascertaining which of the two last statements was correct, Mr. Reay was requested to designate and itemize any additional items, exclusive of interest and Federal taxes, that should be deducted in order to arrive at the net profits of the company on the commodities herein indicated. (R. 368.)

Referring to petitioner's Exhibits (S) 69 to 73 (R. 480-484), the amount of any further deduction from the profits on sales of steel products and timbers is practically offset by the amount of the tax refund recently received applicable to that group of properties, and any difference from the figures already presented would be inconsequential.

It appears from R. 365, that the only additional items Mr. Reay had in mind were appropriations to pension fund or reserves other than depletion or depreciation. One of these is an intercompany proposition and the other is either "inconsequential" or has been taken care of in other ways, and

neither one is a correct charge against the current earnings of the company herein shown.

Exhibits 74-84 (R. 484-488), inclusive, show per cent of profits to sales and cost before deducting Federal taxes and interest on finished steel, pig iron, iron ore, coke, coal, lumber, and by-products of the coke plant, such as tar, ammonium sulphate, benzol, and coal gas, in detail, also profits per ton on finished steel, pig iron, and iron ore.

In Exhibit P (S) 120 (R. 512), showing allocation of Federal tax and interest payments, it is observed that the iron and steel accounts, coal and coke accounts, and the by-products accounts are each consolidated.

For the purpose of this paragraph the computations are made on the same basis except that each of the iron and steel accounts are shown separately.

The total sales and cost of sales of these commodities are found in Exhibit P (S) 84 (R. 488), and are as follows:

Amount of sales

Classification	1916	1918	1920	1922
Finished steel	\$1,704,479	\$13,006,085	\$9,154,907	\$4,182,721
Pig iron	861,774	1,012,527	619,651	1,475,981
Iron ore	214	304,301	689	
Steel billets	204	2,007	1,907	\$
Total steel	2,566,667	14,326,913	9,777,154	5,658,692
Coal and coke	121,000	839,925	174,975	303,294
By-products			1,413,600	1,165,000
Lumber	155,080	642,007	672,491	373,526
Grand total sales	2,842,747	15,808,845	11,967,120	7,490,512

Cost of sales

Classification	1916	1918	1920	1922
Finished steel	\$4,433,780	\$4,286,821	\$4,619,731	\$4,550,140
Pig iron	640,455	661,201	455,005	1,109,863
Iron ore	145	153,223	301	
Steel billets	341	2,472	940	7
Total steel	5,084,681	5,103,727	5,086,977	5,757,170
Coal and coke	111,558	229,111	151,846	519,426
By-products			929,549	190,332
Lumber	104,745	555,621	423,690	932,902
Grand total cost	5,301,284	5,887,459	6,491,016	7,299,829

The net profits before deducting interest and taxes are as follows:

Net profits

Classification	1916	1918	1920	1922
Finished steel	\$1,286,098	\$4,707,264	\$2,555,246	\$1,179,402
Pig iron	251,319	151,327	184,046	77,266
Iron ore	159	140,399	343	
Steel billets	127	821	627	1
Total steel	1,537,503	5,099,811	2,740,262	1,256,669
Coal and coke	49,830	102,414	24,576	45,438
By-products			190,111	305,076
Lumber	55,665	49,279	449,942	128,138
Grand total	1,643,003	5,251,504	3,384,891	1,735,321

¹ Loss.

The per cent of profits on sales before deducting interest and taxes is as follows:

Per cent of profits to sales

Classification	1916	1918	1920	1922
Finished steel	42.9	98.0	55.4	25.9
Pig iron	39.1	24.7	40.7	6.9
Iron ore	10.5	90.9	20.5	
Steel billets		33.2	66.7	13.5
Total steel	41.1	88.0	57.8	11.7
Coal and coke	44.7	45.5	15.5	8.9
By-products			41.4	36.1
Lumber	53.0	8.8	51.9	13.7
Grand total	40.2	58.0	39.9	13.9

¹ Loss.

The per cent of profits to cost before deducting interest and taxes is as follows:

Per cent of profits to cost

Classification	1916	1918	1920	1922
Pig iron	74.2	87.6	88.3	14.0
Iron ore	89.2	83.1	42.3	5.5
Steel billets	116.0	95.5	114.4	
		25.3	98.6	14.3
Total steel	69.7	87.8	28.6	11.7
Coal and coke	30.2	45.5	15.6	8.7
By-products			70.7	25.5
Lumber	7.1	25.2	100.0	16.6
Gross total	67.3	58.5	44.7	3.0

(1) Lums.

The total amount of taxes and interest that Mr. Reay says should be deducted is as follows Exhibit P (S) 120 (R. 512):

Year	Interest	Federal tax	Total
1916	\$171,176.63	\$69,246.30	\$240,422.93
1918	64,697.86	2,770,744.68	2,835,442.54
1920	33,790.73	609,452.73	643,243.46
1922	78,686.59		78,686.59
Total	288,361.81	3,449,443.71	3,737,805.52

The note on bottom on Exhibit P (S) 120 (R. 512) shows that the interest charges were allocated on a production cost basis and that the taxes have been apportioned on the basis of taxable profits earned and invested capital employed.

Allocating the total interest and taxes between pig iron, steel, iron ore, and billets in the ratio of the total cost of sales of each, as shown in Exhibit P (S) 84 (R. 488), and accepting Mr. Reay's fig-

ures as to the total and as to coal, coke, and lumber, the following detail figures are shown as to each account:

Allocations of Federal tax and interest to accounts

Classification	1916	1919	1920	1922
Finished steel	\$136,767	\$2,139,940	\$456,332	\$45,026
Pig iron	23,682	201,653	30,164	14,000
Iron ore		47,351		
Billets		621		
Total steel	160,449	2,389,565	486,496	59,026
Coal and coke	2,928	56,180	4,439	5,900
By-products	(1)	(1)	252,324	3,000
Lumber	4,748	11,500	30,308	3,280
Grand total	168,125	2,457,246	769,167	71,206

(1) By-product coke ovens did not begin to operate until after 1916.

The per cent of Federal tax and interest paid to sales is as follows:

Per cent of Federal tax and interest to sales

Classification	1916	1919	1920	1921
Finished steel	2.1	16.2	5.0	2.1
Pig iron	2.9	19.9	9.9	2.0
Iron ore		15.0		
Billets		26.5		
Total steel	2.13	19.3	5.0	2.1
Coal and coke	1.9	16.1	2.1	1.1
By-products			7.2	.9
Lumber	3.0	27.6	5.9	0.9
Grand total	2.14	19.7	5.7	2.0

Should it be desired to arrive at the per cent of profit on each of these commodities *after* setting aside a sufficient amount of the sales proceeds to pay interest and Federal tax deduct the *per cent* of taxes and interest to sales as shown above from the per cent of *profit* on sales before deducting

taxes and interest heretofore shown. The net is as follows:

Classification	1916	1918	1920	1922
Finished steel.....	40.5	17.2	22.6	12.4
Pig iron.....	25.5	14.9	24.8	4.2
Iron ore.....	53.5	33.2	53.3	
Steel billets.....		16.6	49.7	12.5
Total steel.....	38.97	18.7	22.8	11.8
Coal and coke.....	24.8	18.8	11.0	6.9
By-products.....			34.2	25.4
Lumber.....	4.0	17.4	45.6	18.0
Grand total.....	38.05	17.3	25.5	1.9

¹ Loss.

The above shows the per cent of profits on sales after allowing all expenses and after setting aside a sufficient sum to pay Federal taxes and interest.

By multiplying these percentages by the rate of turnover of domestic capital the total net per cent of earning on these commodities for the year is obtained.

Manufacturers of machinery are rated as one of the industries having a slow turnover.

The domestic capital and domestic sales as shown by Exhibits P (S) 139 (R. 567) and P (S) 137 (R. 562) are as follows:

Year	Domestic capital	Domestic sales	Turnover of sales per dollar of domestic capital invested
1916.....	\$100,000,000	\$40,000,000	40.00
1917.....	115,000,000	125,370,000	1.09
1918.....	120,000,000	168,500,000	1.34
1919.....	120,000,000	190,482,514	1.23
1920.....	135,000,000	177,288,045	1.31

The per cent of Federal taxes and interest to cost of sales is as follows:

Classification	1916	1917	1920	1922
Finished steel	3.6	36.4	6.9	1.0
Pig iron	3.6	36.4	7.0	1.0
Iron ore		36.3		
Billets		33.6		
Total steel	3.6	36.4	5.9	1.0
Coal and coke	2.5	24.0	2.9	1.1
By-products			12.3	1.2
Lumber		24.6	11.9	4
Grand total	5.6	29.2	7.6	2.0

Should it be desired to obtain the net per cent of profit to cost, after setting aside a sufficient amount to pay Federal taxes and interest, subtract the percentages shown above from the per cent of profits to cost, before deducting Federal taxes and interest, heretofore shown. This would show the net per cent of profit to cost *after* deducting Federal taxes and interest as follows:

Net per cent of profit on cost after deducting Federal taxes and interest

Classification	1916	1917	1920	1922
Finished steel	76.6	27.2	21.8	17.6
Pig iron	33.6	22.7	15.2	4.2
Iron ore	115.0	65.0	114.4	
Billets		19.2	90.0	14.2
Total steel	66.1	27.4	21.7	12.7
Coal and coke	22.7	21.1	12.7	7.4
By-products			38.4	24.2
Lumber	4.2	18.4	26.1	17.4
Grand total	66.7	27.0	27.1	2.0

* Low.

The following statement shows the net profits per ton of steel, pig iron, and iron ore as shown by Exhibits P(s). 74, 75, and 76 (R. 484-485), and

the interest and Federal taxes per ton as computed from these exhibits and from Exhibit P(s). 120 (R. 512), and the net profit per ton after paying Federal taxes and interest.

Profits per ton of steel, pig iron, and iron ore before and after deducting Federal taxes and interest

Classification	1916	1918	1920	1922
Finished steel:				
Sale price per ton.....	\$35.12	\$43.08	\$36.18	\$54.74
Cost per ton.....	20.16	40.04	40.61	36.21
Profits per ton.....	14.96	28.04	15.55	18.47
Interest and tax per ton.....	.75	12.18	2.80	.87
Net profits per ton after deducting interest and taxes (R. 484, 512.)	14.21	15.86	12.75	17.60
Pig iron:				
Sale price per ton.....	17.18	35.14	31.50	30.51
Cost per ton.....	12.24	22.95	21.85	19.44
Profits per ton.....	4.94	12.19	9.65	1.07
Interest and tax per ton.....	.44	6.98	1.51	.20
Net profits per ton after deducting interest and taxes	4.50	5.21	7.14	.87
Iron ore:				
Sale price per ton.....	3.17	3.87	4.07	
Cost per ton.....	1.40	1.98	1.90	
Profits per ton.....	1.71	1.89	2.17	
Interest and taxes per ton.....		.03		
Net profits per ton after deducting interest and taxes	1.71	1.29	2.17	

¹ Less.

NOTE.—The charges for 1922 cover interest only; no taxes paid.

F. *This dominance is shown by the tremendous advantage enjoyed by the International Harvester Company over its competitors in the matter of manufacturing costs*

The supplemental petition following the report of the Federal Trade Commission alleged that the International Harvester Company, by reason of its tremendous resources and credits, its lower costs,

and its control of sources of supplies, enjoyed a power over competitors which could be exerted at any time for their destruction.

Justification of the allegation would seem to be evident from the mere contemplation of the enormous invested capital of the International Company, the volume of its sales admitting of quantity production, the standing which the lines unlawfully acquired and still retained—the McCormick and Deering—have in the trade, and last, but not least, the ownership of its profitable side lines—steel, lumber, coal, etc.

Fortunately, however, the Federal Trade Commission made a thorough and painstaking investigation of the subject of costs in the preparation of its report, and Mr. Bennett testified fully as to the manner in which the investigation was conducted and the report prepared. (R. 132-159.)

Officials of the International Company, Deere & Company, the Moline Plow Company, and Emerson-Brantingham Company were invited to confer with the Commission in regard to the cost inquiry. Reay, Comptroller of the International Harvester Company, and his assistant, prepared a form to be used by the several manufacturers in submitting their cost data to the Commission. This form was approved by these men who—

agreed that it would give the Commission the desired information and would fairly and properly present the true costs as far as they could be obtained. (R. 135.)

These forms were filled in by the implement-manufacturing companies with the aid of accountants of the Commission, and Mr. Bennett personally attended the offices of all of the harvester companies, with the exception of the Walter A. Wood Co., Thomas Manufacturing Co., and the Ohio Rake Co., in order to insure care and uniformity in the work. (R. 136-137.)

As testified by Mr. Legge, the accountants of the Federal Trade Commission were called upon to consider manufacturing costs in a great many industries during the war period. (R. 198.) These sworn agents of the Government, with no motive save the faithful performance of their public duty, undoubtedly were highly qualified for this work.

According to Mr. Bennett, the Commission during this inquiry found that of the manufacturers reporting costs, there were about seven or eight different methods employed by them in distributing their overhead, and in order to get all companies on a comparable basis it was necessary to adopt some standard of distribution. The Commission found that the majority of companies adopted productive labor as the basis of distribution of their factory burden; consequently the productive labor was the basis on which the factory burden of all companies was distributed. No distinction was made between the International Harvester Company and any other company, but they all were put on the same basis. A particular item of difference between the Harvester Company and its

competitors in the matter of cost accounting was that the Harvester Company priced their inventories on what they were pleased to call the basic inventory principle rather than the cost or market principle. (Bennett, R. 139.) The Commission, in order to put the figures of the several companies upon a comparable basis, and because it did not regard the International Company's practice as proper, disregarded the so-called basic inventory principle in arriving at its findings.

These differences between the Commission and the International Company, relating mainly to the question of inventories, and the exclusion of certain foreign losses, have been treated in Appendices C, D, and E.

The reported costs, as so revised by the Commission, show that in 1916 the International Harvester Company enjoyed an advantage over its nearest competitor, Deere & Company, of \$11.10 per machine in the cost of manufacturing grain binders; and that in 1918 it had an advantage over the Moline Plow Company, its nearest competitor (not now manufacturing harvesting machines), of \$28.08. That in 1916 the International had an advantage over Deere & Company, its nearest competitor, of \$16.77 in the manufacture of corn binders; and in 1918 an advantage of \$17.69 over the Moline Plow Company in the same line. Finally, that in 1916 the International Company enjoyed an advantage over Deere & Company, its nearest competitor, of \$1.52 per machine in the

manufacture of mowers, and in 1918 possessed a margin of \$3.41 over the Moline Plow Company, its nearest competitor in that line.

The foregoing is a contrast in each instance between the International Harvester Company and its lowest competitor. The cost of the lowest competitor, of course, is very much lower than the average. The significance of the figures can be better appreciated by a contrast of the International Company's costs with those of its highest competitor in each instance. Thus, while in 1916 the spread between the International Company's cost and the cost of Acme Company per grain binder was \$55.18; in 1918 the spread between the international and the Acme Company was \$82.96. In 1916 the spread between the International Company and the Acme Company in the cost per corn binder was \$63.43, and in 1918 the spread between the same companies on the same machine was \$103.63. In 1916 the spread between the International Company and the Acme on the manufacturing cost of a mower, a comparatively low-price machine, was \$13.20; the spread between the International Company and the Thomas Manufacturing Company on mowers in 1918 amounted to \$25.80.

The details concerning these costs as revised by the Commission are given in tables compiled from the Commission's report (Pet. Ex. 90, and included in this brief Appendix G).

These tables deal only with the manufacturing costs of the several companies as revised by the Federal Trade Commission, and the figures have been attacked by the defense presumably upon the ground that the efforts of the Commission to remove inflation and reduce the costs of the several companies to a comparable basis bore most heavily upon the International Company.

But it also appears from the figures reported by the several companies upon the form prepared by the Comptroller of the International Company, and without revision by the Commission, that the International enjoys a substantial advantage over its competitors in the cost of manufacturing the more important classes of harvesting machines. The tables in Appendix H, *infra*, pp. 177-179, afford a comparison of the reported costs and revised costs on grain binders, corn binders, and mowers.

The reported costs are those reported by the companies on the form devised by Mr. Reay of the International, and the revised costs are the companies' costs as revised by the Federal Trade Commission. In view of the contention about these revisions, it is interesting to note that in these tables the International Harvester Company is always lowest in the reported as well as revised column. And in view of the unfairness to the Harvester Company alleged in these revisions, it is interesting to note the substantial revisions in the figures of other companies, particularly those of the Moline

Plow Company and the Acme Company; and as showing that the Commission was seeking the truth, not to indict an industry, note revision of Massey-Harris upwards instead of down.

If fault is to be found with the Commission's figures, the criticism should come from the Government rather than from the defendants, because these cost figures did not reject two items of cost inflation which inhered only in the International Company's costs and not in those of any other company. Those two items are intercompany profit and "Pittsburgh plus" freight rates.

G. Intercompany profit

The Federal Trade Commission in computing the costs of the International Harvester Company included inventories at prevailing market prices and made no allowances on account of intercompany profits on transportation, lumber, steel, and other raw materials manufactured by the International Company; although, obviously, if we are to regard the Harvester Company as an integrated unit, as it would have us do, there is thus included in its cost figures an element of inflation not included in the figures of the other companies.

The International Harvester Company is equipped with ore lands, coal lands, timber lands, by-product coke ovens, blast furnaces, steel furnaces, plant service railroads, ore boats, etc. No competitor of the International Harvester Com-

pany is similarly equipped. The International Company therefore realizes a profit not only on its sales of farm implements and surplus materials on the outside but also on the intercompany sales of raw materials used in the manufacture of harvesting implements.

Competitor witnesses all agreed that materials were the most important items entering into the cost of farm machinery, and of all materials steel was conceded to be the most important.

The steel business of the International Company formerly was conducted through the Wisconsin Steel Company, a subsidiary. In 1917 the International Harvester Company of New Jersey took over the properties of the Wisconsin Steel Company, and in 1918 the International Harvester Company of New Jersey and the International Harvester Corporation were merged into the present International Harvester Company. (Pet. Ex. (S) 9, R. 404.)

The steel mills of the International Harvester Company and its two principal harvesting machine plants—the McCormick and Deering—are located in Chicago. Steel is transported from the mill to these plants mainly by rail, the originating carrier being the Chicago, West Pullman & Southern Railroad, a subsidiary of the International Harvester Company. The steel mills, etc., were acquired along with the properties of the unlawfully combined harvester companies in 1902. (R. 232.)

The harvester works purchase their steel requirements from the steel mills identically as they would purchase from other steel suppliers, these separate departments of the Harvester Company being treated as distinct units. That is to say, the harvester works obtain their steel from the steel mills at current market prices and in accordance with prevailing customs in the steel trade. (Reay, R. 223.) While the profit-producing operations of the departments are kept separate, the earnings eventually find their way into the same account, so that money charged off from one department to another is a mere matter of bookkeeping.

The International Harvester Company obtains about 50 per cent of its steel requirements from its steel mills, these purchases absorbing about 50 per cent of the output of the steel mills (Reay, R. 223), the situation being the same as if the International used the entire production of its mills, since its purchases of steel on the outside are offset by sales of steel on the outside.

The Federal Trade Commission in computing the costs of the International Harvester Company included inventories at prevailing market prices and made no allowance on account of intercompany profits on steel, lumber, etc. (Bennett, R. 136.) Consequently, the Commission's figures do not correctly reflect the actual cost of the International Company as an integrated unit, since they include this substantial item of intercompany profit on inventories.

Exhibit D (S) 36, R. 638, gives the following steel requirements for certain machines in 1923:

	6-foot binder, W.B. C.	5-foot power	10720 rake	Regular corn binder, S.B. C.
Weight of steel requirements:	Pounds	Pounds	Pounds	Pounds
(1) Rolled by Wisconsin Steel Works.....	613	180	321	434
(2) Purchased from outside concerns.....	118	20	11	118
Total.....	729	200	332	552

Assuming that the same figures as to weight requirements would apply to the year 1916, the steel profit in a six-foot binder with bundle carrier would be 729 times the quotient of \$14.23 (the net profit per ton of steel), divided by 2,000 (the number of pounds in a net ton of steel), which is \$5.18 per binder. For 1918 the steel profit per binder would be \$3.95 and for 1919, \$4.64.

In 1918, the last year covered by the Commission's figures, the International Harvester Company sold 66,182 grain binders. The profit on steel per binder being \$3.95, the total steel profit on binders sold amounted to \$261,418 in that year.

It is not material whether all steel used is furnished by the company's mills, for the reason that it has the capacity to furnish all, and where it does not furnish all it may be presumed that the company has arrangements to obtain what it does not furnish on terms equally favorable as to price and to sell an equal amount on the outside on terms equally favorable as to profit.

H. Pittsburgh Plus¹

The Commission's figures did not take into consideration the element of inflation in the International Harvester Company's costs represented by "Pittsburgh plus," a practice then obtaining in the steel industry and which has since been condemned by the Federal Trade Commission as an unfair method of competition.

Mr. Reay, Comptroller of the International Harvester Company, testified that the company in disposing of its steel, both to itself and to outside purchasers, observes the prices and terms of its competitors in the steel business, more especially the United States Steel Corporation. (Reay, R. 79, 223.) This affinity between the monarch of the harvester industry and the monarch of the steel industry extends to the observance of the same accounting methods, which, according to Reay, have been uniform for a long term of years. (R. 79.)

It also extended to the observance by the International Harvester Company of the Pittsburgh basing point practice of the United States Steel Corporation, the so-called "Pittsburgh plus," a now familiar practice.

For years past and until a recent period all steel has been sold f. o. b. Pittsburgh, regardless of the point of manufacture. Under this practice the price paid for steel purchased from a manufacturer

¹ This section is based on evidence taken in 1923-1924. The Federal Trade Commission issued an order against the practice, but the record does not disclose the extent to which it has been abandoned.

in Pittsburgh was the base price plus the freight from Pittsburgh to the point of delivery, wherever that might be. (Peek, R. 106.)

The price paid for steel from manufacturers outside of Pittsburgh was the Pittsburgh base price plus the freight from Pittsburgh to the point of delivery, regardless of the amount of freight actually paid, if any.

Under this practice a purchaser buying steel from a plant or mill located in his own city would be required to pay the same price to that mill as if he had bought the steel in Pittsburgh and actually paid the freight from Pittsburgh to the point of delivery.

As a result the Harvester Company sold steel to itself in Chicago at the Pittsburgh price plus the wholly fictitious freight rate from Pittsburgh, and that which normally would be an item of actual cost became in the case of the Harvester Company a matter of profit and a further evidence of the tremendous advantage of that company over its competitors.

In the direct examination of A. E. McKinstry, Vice President of the International Harvester Company, Exhibit P (S) 106 (R. 501), the car-load rate of freight on finished steel in cents per hundred pounds from Pittsburgh to Chicago is given as follows:

	Cents
Jan. 1, 1903, to May 31, 1907.....	19.5
June 1, 1907, to Oct. 25, 1914.....	18
Oct. 26, 1914, to Sept. 19, 1917.....	18.9

	Cents
Sept. 30, 1917, to June 24, 1918.....	21.5
June 25, 1918, to Aug. 25, 1920.....	27
Aug. 26, 1920, to June 30, 1922.....	38
July 1, 1922, to.....	34

The total amount of freight per net ton of 2,000 pounds is obtained by multiplying the rates given above by twenty. As an illustration: The freight rate on June 25, 1918, per hundred pounds is given as 27 cents. By multiplying this rate by 20 (the number of hundredweights of steel in a net ton), a total freight rate of \$5.40 per net ton is obtained.

The freight rate on August 26, 1920, per hundred pounds is given at 38 cents. By multiplying this rate by 20 (the number of hundredweight of steel in a net ton), a total freight rate of \$7.60 is obtained.

Exhibit P (S) 110, R. 507, shows that finished steel was selling in Pittsburgh at \$54.00 per net ton of 2,000 pounds on January 1, 1919, while it sold at Chicago at \$59.40, or an increase of \$5.40 per net ton. This exhibit also shows the same differential as to prices between Pittsburgh and Chicago on March 21, 1919.

Exhibit P (S) 110 also shows that on August 26, 1920, finished steel was selling in Pittsburgh at \$47.00 per net ton of 2,000 pounds, while it was selling at Chicago at \$54.60 per net ton, or an increase of \$7.60 per net ton.

It also shows the same differentials as to prices between Pittsburgh and Chicago on April 13, July 6, July 26, September 26, November 1, and November 15, 1921.

These differentials in price are shown in column 4 of Exhibit P (S) 110 to be the same as the difference in freight.

In other words, the steel consumer in Chicago had to pay the same price per ton for steel purchased from a Chicago manufacturer as he would have to pay if purchased at Pittsburgh and actually shipped to Chicago and the freight actually paid in addition to the base price.

It appears from Exhibit P (S) 110, R. 507, that the increase in price per ton of finished steel on certain dates in 1922 in Chicago as compared to Pittsburgh was only \$2.00 per net ton, whereas the difference in freight per net ton was \$7.60. This means that the price *f. o. b.* Chicago was reduced and that the mills in Chicago were unable to longer secure the full differential of freight between Pittsburgh and Chicago in addition to the base price and concluded to take less.

The additional price for steel added to the Pittsburgh base price, whether it be all or a part of the freight differential, is added to the cost to manufacture and sell, and that same amount plus the per cent of profit charged thereon is paid by the purchasers of all harvesting machines.

The profits made by the International Harvester Company by virtue of the Pittsburgh Plus system are reflected in the profits of the Wisconsin Steel Company. The amount of inflation in prices of harvesting machines by virtue of the Pittsburgh Plus system varies according to the freight rate

and quantity of steel used in the manufacture of the machines.

The redirect examination of Mr. Reay (R. 638, defendant's Exhibit (S) 36) shows the steel requirements per machine in pounds in the manufacture of certain harvesting machines, as follows:

	Pounds
Six (6) ft. binder with bundle carrier.....	720
Five (5) ft. mower.....	205
Ten by twenty-six (10 x 26) rake.....	342
Regular corn binder, 3-bundle carrier.....	544

Multiply these figures in pounds by the freight rate from Pittsburgh and the result will show the additional cost paid by the consumer by virtue of the Pittsburgh Plus system of price fixing for each of the harvesting machines named. As an illustration, the freight rate on finished steel per hundred pounds from Pittsburgh to Chicago from July 25, 1918, to August 25, 1920, was 27 cents. By multiplying this amount by the number of pounds of steel in the harvesting machines indicated the result is the additional amount per machine sold, paid by the consumer as follows:

Six ft. binder (with bundle carrier), 720 pounds.....	\$1.96
Five ft. mower, 205 pounds.....	.55
Ten by twenty-six (10 x 26) rake, 342 pounds.....	.92
Regular corn binder (3-bundle carrier), 544 pounds.....	1.46

The freight on finished steel per hundred pounds from Pittsburgh to Chicago from August 26, 1920, to June 30, 1922, was 38 cents. By multiplying this amount by the number of pounds of steel in the harvesting machines indicated, the result is the additional amount paid by the consumer per machine

manufactured during that period and sold as follows:

Six-ft. binder with bundle carrier, 729 pounds.....	\$2.77
Five-ft. mower, 206 pounds.....	.75
Ten by twenty-six (10 X 26) rake, 342 pounds.....	1.30
Regular corn binder (3-bundle carrier), 544 pounds.....	2.06

The inflation in the cost of manufacture of harvesting machines by the use of this system has the effect of showing a decreased earning on the sale of harvesting machines and a corresponding increase in the earnings of the Wisconsin Steel Company or the steel department of the International Company. This also has the effect of showing a smaller rate of earning from the sale of harvesting machines than really exists.

This supposed freight is included in the cost sheets showing the cost of steel entering into the manufacture of harvesting machines. The selling price of harvesting machines is fixed by first computing the cost and then adding thereto the per cent of profit desired. It is therefore observed that the consumer not only pays this additional amount in price based on the freight he would have to pay if actually buying in Pittsburgh, but in addition he must pay an amount equal to the per cent of profit made by the manufacturer in the sale of the machine.

If it is desired to make 20 per cent profit on cost the total inflation on account of the "Pittsburgh Plus" system in the sale price of a six-foot grain binder, indicated above, would be \$2.77 plus 20 per

cent, or 55 cents, a total of \$3.32. The inflation in a 205-pound mower would be 78 cents plus 20 per cent, or 93 cents. The inflation in a 10 by 26 rake would be \$1.30 plus 20 per cent, or \$1.56. The inflation in a regular corn binder would be \$2.06 plus 20 per cent, or \$2.47.

These figures cover the period from August 26, 1920, to June 30, 1922, when the freight rate from Pittsburgh to Chicago was 38 cents per 100 pounds.

The figures covering the period from July 25, 1918, to August 25, 1920, are less because the freight rate was only 27 cents per 100 pounds.

The higher the freight rates from Pittsburgh to Chicago the larger the profits of the International Harvester Company by virtue of the Pittsburgh Plus system of rate fixing, the larger the amount the consumer must pay for harvesting machines, and the smaller the apparent rate of earning of the International Harvester Company upon the sale of harvesting machines.

Assuming that each machine sold of the type herein indicated contains practically the same amount of steel, by multiplying the inflations in the price of said machines by virtue of the Pittsburgh Plus system as herein shown by the number of machines sold an approximate amount of its enormous cost to the consumer and corresponding profit to the manufacturer by virtue thereof can be obtained.

But while the increased prices based upon inflated costs resulting from the practice inure to the profit of the International Company, with its own steel mill, it means a serious loss to its competitors who actually pay out the amount of the supposed freight.

The extra cost to the public of the Pittsburgh Plus system of prices is more vividly set out in "Findings as to the Facts" in *Federal Trade Commission v. United States Steel Corporation* and subsidiaries, Docket No. 760.

In this connection attention is invited to the following section of paragraph 13, page 17, of this report relating to harvesting machines:

Deere & Company, farm implement manufacturers, pay \$488,400 annually as imaginary freight, while the farmers who purchase their implements must pay over double this amount, or over \$1,000,000 annually, as extra prices for Deere & Company's implements because of this imaginary freight item. In other words, for every dollar which the farm implement companies pay as Pittsburgh Plus, the farmers must pay more than double every such dollar, because to the actual Pittsburgh Plus paid by the farm implement manufacturer must be added the various percentages of overhead, selling expenses, and profits which are borne in the ordinary course of business. The figures are undisputed in the record. As the President of the American Farm Bureau Federa-

tion, representing more than a million and a quarter farmers, testified, the double Pittsburgh Plus imaginary freight thus paid by the farmers in only eleven middle western states amounted to around \$30,000,000 annually. The farmers in the other states would use even more steel than those in the 11 states figured in the calculations. The Emerson-Brantingham Company, a farm implement manufacturing company, pays around \$100,000 annually as Pittsburgh Plus imaginary freight, which means that its customers must pay around \$200,000 annually more than they would have to pay if the Chicago District mills eliminated Pittsburgh Plus as hereinabove mentioned. The Litchfield Manufacturing Company, a farm implement manufacturing company, pays \$68,000 annually as imaginary freight, and its customers pay twice that amount. Pittsburgh Plus resulted in an addition to the list prices of J. I. Case Threshing Machine Company, an agricultural implement manufacturing company, in the year 1920, of \$509,000, which amount the farmers would have been saved if Pittsburgh Plus had not been charged.

2. THE DOMINANCE OF THE INTERNATIONAL HARVESTER COMPANY IS REFLECTED IN ITS CONTROL OVER PRICES

Control over competitor's prices

It is inevitable that the International Harvester Company, controlling such a preponderating pro-

portion of the trade and commerce in harvesting machines and possessing the innumerable advantages over competitors which have been noted, should exert a dominating control over prices in the harvester industry.

It requires no proof to show that competitors who share the remaining business in slender lots and who possess none of the advantages enjoyed by the International Harvester Company by reason of its vast proportion of the business, its control of raw materials, etc., are unable to sell for less, and that in the nature of the case they can not hope to sell for more.

The very existence of this unlawful combination of harvesting machine companies known as the International Harvester Company therefore tends to stabilize and make uniform all prices in the industry as fully as if it controlled not a majority but all of the trade and commerce therein.

Such a combination of former competitors bound together in enduring form accomplishes all the baneful results that were attributed to the *Hardwood Lumber Association*, 257 U. S. 377, and the *Linseed Oil Association*, 263 U. S. 371, condemned by this Court.

Of course, all competition between the McCormick, Deering, Milwaukee, Plano, Champion, Osborne, Minnie, Keystone, and Buckeye companies ceased when and as they were acquired by the International Harvester Company. But the neces-

sary effect of the combination of 1902 was largely to eliminate, or at least make more feeble (*United States v. Cement Protective Association*, 294 Fed. 370) competition between the unlawfully combined companies and the few remaining competitors.

Representatives of competitors, who continue in the harvester line by sufferance of the International Company, naturally were most guarded in giving their testimony against this "big brother" of the industry. But when asked fairly the question how they arrived at their prices they generally admitted that they got what competition, i. e., the competition the International Harvester Company would allow. Such following of the prices of the International Company leads to that uniformity which it is the policy of the law to prevent.

C. S. Brantingham, president of the Emerson-Brantingham Company (R. 82):

We arrive at our prices by costs and competitive conditions. Broadly we follow the Harvester Company prices—not always.

George White, vice president and general manager of the Massey-Harris Company (R. 85):

We arrive at our prices by ascertaining costs and recognizing competitive conditions. Sometimes we follow the Harvester Company's prices.

Henry L. Taylor, vice president and sales manager of B. F. Avery & Sons (R. 88):

Our prices are based on cost and competitive conditions. General speaking, on har-

vesting machinery we follow the prices of the International Harvester Company. We are in position to observe the prices and changes in prices of the Harvester Company on these products.

Edward K. McLean, jr., Secretary the Walter A. Wood Company (R. 92):

We generally had to follow the prices established by the International Harvester Company.

William Deering Steward, President of the Independent Harvester Company (R. 95):

We attempted to arrive at our selling price on the basis of a cost system, but our agents in the field seemed to fix their own prices and made various concessions. In some instances we followed the prices of the International Harvester Company.

William L. Jacoby, president of the Acme Harvesting Machine Company (R. 98):

It (the Acme Company) necessarily had to follow prices of its competitors and must have followed the prices of the International Harvester Company or any other company which manufactured harvesting machines. It probably had to reduce its prices below those of its principal competitors in order to sell and liquidate.

George N. Peek, president of the Moline Plow Company (R. 106):

In arriving at the prices on our harvesting machines we always figure our cost of pro-

duction and then we aim to add our normal profit and come as near getting that as the general competitive conditions will permit.

William D. Graves, president of the Ohio Rake Company (R. 114) :

We have to follow the International Harvester Company prices in order to get any business at all.

Only Deere & Company, originally established as a plow company in 1837, and having a valuable good-will asset in the name "John Deere," is able to get a higher price for its harvesting implements than the International. But the margin is so slight as to be negligible, and the prices unquestionably are based upon those of the International with a uniform differential. Mr. Silloway, vice president and sales manager, testified as follows (R. 117) :

We arrive at selling prices by taking our cost and the margin of profit and getting as near that as competition will permit. Practically all the time and in practically all lines we get a little more than the International Harvester Company. For a six or seven foot binder, we get \$2.00 more; for an eight-foot binder, \$2.50 more; for our mower, 50¢ to a dollar more, according to the various sizes.

Deere & Company is the only substantial competitor of the International in the harvester line, but it is apparent that its harvester line is only slightly profitable, if at all, and is maintained only to enable

the dealers handling the John Deere tillage tools to have a full line. Mr. Silloway had already testified (R. 117) :

The profits realized by Deere & Company on the harvesting machine lines are not so great as the profits on other lines. There is a whole lot of difference.

If this is the situation with reference to this comparatively large and efficient competitor, what about the remaining small, high-cost competitors ?

Due to lack of uniformity in the price lists as to discounts, freight differentials, equipment of the various implements, accessories, etc., an exact comparison of prices is rendered difficult. The tables in Appendix I, however, compiled from price lists offered in evidence, illustrate the substantial uniformity which exists as to wholesale prices on the more important classes of harvesting machines and the exact uniformity as between the International Harvester Company and its supposed new competitors, Avery and Emerson-Brantingham.

The International Company, having this control over prices, can raise or lower them at any time. It can raise them, as it did during the war period, to a point which will insure prosperity to its competitors, or it can lower them, as it did in 1921, so as virtually to eliminate competition. Such price changes may be responsive to economic conditions and not the result of a deliberate purpose to suppress competition, but the effect upon competitors and the public is the same.

Until 1921 the prices of farm machinery had been maintained at approximately the war level. The defense has introduced much evidence to show that the prices were too high and that reductions were necessary in order to stimulate buying. The first cut was announced early in January by the Oliver Chilled Plow Works on tillage tools. The theory of the defense is that this cut made necessary general price reductions, since consumers, finding that prices in one line had been lowered, naturally would look for like reductions in other lines.

This may or may not account for what happened in that year, but in any case the event demonstrates the power of the International Company over the very life of its competitors.

As shown most significantly by Defendant's Exhibit (S) 32 (R. 632), the United States Steel Corporation on April 12, 1921, announced reductions on all steel products ranging from 10 per cent to 17 per cent. The International Harvester Company, by virtue of its connection with the steel business, may be presumed to have had advance notice of this. In any event the International on the following day, April 13, announced a general reduction of 10 per cent on its entire harvester line. Not only that, but a similar reduction was announced *on the same day* by the Emerson-Brantingham Company and B. F. Avery & Sons, which were at that time no more than selling agents for the International Company. This flat 10 per cent reduction was not

dictated by steel, because steel is only one element of cost.

This action necessitated like reductions by all competitors, regardless of their ability to continue on that basis. The Moline Plow Company and the Massey-Harris Harvester Company followed with like cuts in their harvester lines on the 15th. Deere & Company announced its reduction a day later. Thus were the prices of the industry reduced almost in unison at a nod from the throne. Of the actual competitors in the full harvester line at that time, only the Massey-Harris, the John Deere, and the Minnesota State Prison survive; Moline, Wood, Acme, all are gone.

Defendant's Exhibit (S) 30 (R. 619-624) with the cross-examination attending its production (Odell, R. 249) shows that a total of some 150 implement concerns, of different kinds, passed out of existence during the years 1912 to 1923. The Court is respectfully requested to contrast that exhibit with the tables on pages 168-170 of this brief showing the capital and surplus cash and stock dividends paid by the International Harvester Company from organization to date and further to contrast it with the evidence concerning the increase of the International Harvester Company's business in new lines as summarized on pages 121 and 122 of this brief. Slowly, steadily, inexorably, the International Harvester Company has continued to enter into and gain an ascendancy over every department of the implement business.

Prices on old-line machines and new-line machines compared

From the day of its organization the International Harvester Company has been supreme in the harvesting-machine industry. Since then it has maintained its control in that field and has branched out into practically every other line of agricultural implements. For convenience, harvesting implements have been termed "old-line" machines and the implements added since the formation of the company are called "new-line" machines.

While the International Company is a large factor in certain of the new lines—the largest in some—it has not yet achieved the complete dominion over the new lines which it enjoys over the old. Consequently, it has been willing to cooperate with its competitors in the new lines through the several departments of the National Implement and Vehicle Association, but has pursued an independent course with respect to old-line competition.*

The Federal Trade Commission in its report (Pet. Ex. 90, p. 544) observed:

The only attempt at organization (among harvester manufacturers) of which there is

*The Federal Trade Commission brought a proceeding against the International Harvester Company and certain of its competitors and certain trade associations while the testimony was being taken in the present case. The Government did not attempt to go into the question of association activities, for the reason that it seemed irrelevant to the sole issue of the case, namely, whether the decree has had the effect to restore competitive conditions.

evidence was frustrated by the refusal of the Harvester Company to become a party to the proposal. The events leading up to the refusal are interesting as indicative of the plight of smaller manufacturers operating in competition with a very large one.

Paradoxical as it may seem, one result of the situation is that the International Harvester Company has kept its prices on old-line machines proportionately lower than its prices on new-line machines. While this policy may for the time being work to the advantage of the users of harvesting machines (a doubtful proposition, since the farmer must use implements of both classes), it will inevitably result in the elimination of all competition in harvesting machines and the establishment of a complete monopoly which is obnoxious to the law and ruinous to the consumer.

This policy has not escaped the anxious eye of competitors. Thus George White, vice president and general manager of the Massey-Harris Company, testified as follows (R. 85):

I always get a price list of the Harvester Company after it is printed, as I do of every other competitor. Last year the increase of prices on the harvester line was less proportionately than on other classes of implements.

In Defendant's Exhibit (S) 20 (R. 601) are stated, in the form of index numbers, the International Company's price ranges for the years

1913-1923. These numbers are computed by designating the price in January, 1913, as 100 and adding to that number on each succeeding date the percentage of increase over that price. Thus it appears from the exhibit that the index number for March, 1916, of a 6-foot grain binder is 105. This means that it was selling on that date for 5 per cent over the price of \$102.50 existing in January, 1913, or \$107.62.

The column headed "simple average" contains index numbers purporting to represent an average of the index numbers of the old-line and new-line machines listed in the exhibit. The index numbers shown in the "weighted average" column were obtained by using the average quantities sold during the 10-year period, 1913-1923, for each type of machine and multiplying these average quantities by the wholesale price of each typical machine in effect on the several dates indicated. The value of this column is impaired by the fact that the compiler arbitrarily eliminated a number of new-line machines, such as harvester threshers, potato diggers, tractors, engines, and motor trucks, so that it does not accurately reflect the entire operations of the International Company.

To present a fair picture of price movements of the company, the statement in Appendix J, *infra* 182, has been prepared from data contained in Government's Exhibit (S) 141 and Defendant's Exhibit (S) 20, showing the prices of the several

classes of machines in January, 1913, with index numbers showing price ranges until May, 1923, without any attempt at averaging over the period. The classification follows that given in Defendant's Exhibit (S) 20, although Mr. Reay has admitted that certain of the implements included in the new line, such as tedders, shredders, corn pickers, etc., were manufactured by the constituent companies before the combination was formed. (R. 228.) A better classification for present purposes would be between the harvester line and all other lines; and so in the statement note is made of machines of the harvester line, which are included under the caption "new-line machines."

V

The purpose in preventing undue restraint is not merely to prevent unreasonably high prices to purchasers and users, and the court erred in applying such a test to the Sherman law

In its opinion the District Court said: "The purpose of preventing undue restraint of trade is to prevent unreasonably high prices to the purchasers and users of the articles traded in," thus establishing a standard under the Sherman Law which this Court has held could not be prescribed by Congress in a statute. In *International Harvester Co. v. Kentucky* (234 U. S. 216), this Court declared unconstitutional an act of that State which punished the charging of unreasonable prices. The ground for the decision was that the

standard was so indefinite that compliance with it could not be established. A similar decision was made in holding unconstitutional the Lever Act, a war-time statute directed against unreasonable prices. *U. S. v. Cohen Grocery Co.* (255 U. S. 81).

Light will be thrown upon the meaning of the Antitrust Act by going back and inquiring into the reasons why Congress wished to secure competition and to preclude combinations which tend to defeat it.

It was not alone the purely economic motive—the fear of higher prices to the consumer, of lower prices to the producer of raw material, of lower wages, of limitations on production, of deterioration in quality of product, or of oppressive treatment of competitors—which caused Congress to legislate as it did.

Congress had in mind the political and social evils which would result if powerful combinations were permitted to assume control of the industries of the country—evils which no amount of governmental regulation could avoid.

As said by Senator Sherman, opening the debate upon the passage of the Antitrust Act in 1890 (21 Cong. Rec. 2457, 2460):

If the concentrated powers of this combination are intrusted to a single man, it is a kingly prerogative, inconsistent with our form of government, and should be subject to the strong resistance of the State and national authorities. If anything is wrong

this is wrong. If we will not endure a king as a political power we should not endure a king over the production, transportation, and sale of any of the necessities of life. If we would not submit to an emperor we should not submit to an autocrat of trade, with *power* to prevent competition and to fix the price of any commodity. (2457.)

* * * * *

The people of the United States as well as of other countries are feeling the power and grasp of these combinations, and are demanding of every legislature and of Congress a remedy for this evil, only grown into huge proportions in recent times. They had monopolies and mortuaries of old, but never before such giants as in our day. You must heed their appeal or be ready for the socialist, the communist, and the nihilist. Society is now disturbed by forces never before felt.

The popular mind is agitated with problems that may disturb social order, and among them all none is more threatening than the inequality of condition, of wealth, and opportunity that has grown within a single generation out of the *concentration of capital into vast combinations* to control production and trade and to break down competition. (2460.)

* * * * *

The point for us to consider is whether, on the whole, it is safe in this country to leave the production of property, the transportation of our whole country, to depend

upon the will of a few men sitting at their council board in the City of New York, for there the whole machine is operated? (2570.)

Senator Sherman also inserted in the Record, as part of his speech (21 Cong. Rec. 2458), the opinion of the Supreme Court of Michigan in the case of *Richardson v. Buhl*, 77 Mich. 632, in which Chief Justice Sherwood said (658):

Monopoly in trade or in any kind of business in this country is *odious to our form of government*. * * *

Indeed, it is doubtful if free government can long exist in a country where such enormous amounts of money are allowed to be accumulated in the vaults of corporations, to be used at discretion in controlling the property and business of the country against the interest of the public and that of the people, for the personal gain and aggrandizement of a few individuals.

Senator Edmunds, who was chairman of the Judiciary Committee and had much to do with the drafting of the statute as finally enacted, said (21 Cong. Rec. 2726):

I am in favor of the scheme in its fundamental desire and motive—most heartily in favor of it—directed to the breaking up of great monopolies which get hold of the whole of a particular business or production in the country and are enabled, therefore, to command everybody—laborer, consumer, pro-

ducer, and everybody else—as the sugar trust and the oil trust, and whatever. *Although for the time being the sugar trust has perhaps reduced the price of sugar, and the oil trust certainly has reduced the price of oil immensely, that does not alter the wrong of the principle of any trust; and that, in the brief definition of my friend from Texas [Mr. Reagan], is a phrase which covers every combination to get control of the life and the industry and the producing and consuming classes of the country.* I am in favor, most earnestly in favor, of doing everything that the Constitution of the United States has given Congress power to do to repress and break up and destroy forever the monopolies of that character, *because in the long run, however seductive they may appear in lowering prices to the consumer for the time being, all human experience and all human philosophy have proved that they are destructive of the public welfare and come to be tyrannies, grinding tyrannies, that have sometimes in other countries produced riots, just riots in the moral sense, and so on.* (Italics ours.)

Referring to these debates, this Court said in *United States v. Trans-Missouri Freight Ass'n*, 166 U. S. 290, 319:

Among these trusts, it was said in Congress, were the Beef Trust, the Standard Oil Trust, the Steel Trust, the Barbed Wire Fence Trust, the Sugar Trust, the Cordage Trust, the Cotton Seed Oil Trust, the

Whisky Trust, and many others; and these trusts, it was stated, had assumed an importance and had acquired a *power* which were dangerous to the whole country, and that their existence was directly antagonistic to its peace and prosperity. (*Italics ours.*)

And again in the *Standard Oil Case*, 221 U. S. 1, 50:

They (the debates) conclusively show, however, that the main cause which led to the legislation was the thought that it was required by the economic condition of the times; that is, the vast accumulation of wealth in the hands of corporations and individuals, the enormous development of corporate organization, the facility for combination which such organizations afforded, the fact that the facility was being used, and that combinations known as trusts were being multiplied, and the widespread impression that their *power* had been and would be exerted to oppress individuals and injure the public generally. (*Italics ours.*)

In his concurring opinion on the original petition in the present case, Judge Hook said (214 Fed. 1001):

No one who has studied with an open mind the history of the Sherman Act and the atmosphere in which it was framed can reasonably doubt that it was not born of a mere concern over prices in dollars and cents but that it was also directed at the creation of artificial barriers across the avenues of in-

dustry deemed destructive of the opportunity, initiative, and independence of those who came after, and, therefore, against the common good.

From the conditions out of which this case arose, there arose also the case of *State v. International Harvester Company*, 237 Mo. 369. The Attorney General of Missouri brought a proceeding in quo warranto against the International Harvester Company of America to oust it for violation of the State Antitrust law, which prohibited—

All * * * combinations * * *
designed * * * or which tend to lessen
full and free competition in the sale
* * * of any commodity or article or
things bought and sold. (Section 10301, R.
S. 1909, 237 Missouri, 404-405.)

The Supreme Court of Missouri held the International Harvester Company (for which the America Company was a mere sales agent) to be a combination in violation of the Act. A writ of ouster was awarded and suspended conditionally. The court, speaking through Mr. Chief Justice Valiant, said (237 Mo. 369, 395):

There can be no doubt but that the competition that existed between the concerns that were engaged in manufacturing and selling harvester machines in 1902 was the moving cause of the organization of the International Harvester Company, and there can be no doubt but that that competition ceased

when the corporation took charge of the business.

* * * * *

The fact that they did not all get together and agree to merge their companies in one, but, on the contrary, each conducted its part of the scheme in form as if it were simply making a sale of its property, shows that they were acting in fear of the Antitrust Statutes (p. 396).

The court made clear that it was the acquisition of a dominating power, not necessarily the exertion of such power, that made the combination unlawful (p. 394):

When men deliberately and intelligently go to work and acquire power that will enable them to control the market if they choose to exercise it, there is no use for them to say that they did not intend to control the trade or limit competition. Nor, when the legality of their act of acquisition is in question, is it any use for them to say that they have not used the power to oppress anyone * * *. The law regards such a power acquired by such a combination as dangerous to the rights of the people and forbids its acquisition.

The finding of the court as to the power of the combination illustrates the ground of decision and distinguishes the case from the *Steel case* (p. 400):

If the International Harvester Company were disposed to exercise the power its enormous wealth gives, and if it were left

unrestrained to do so, it could drive every competitor it now has from the field.

The cause was appealed to this Court, which affirmed the decision of the lower court, in *International Harvester Company v. State*, 234 U. S. 199. The appeal was based upon the claim that the statute, as interpreted by the State Court, was offensive to the Constitution, particularly in that (1) it unreasonably and arbitrarily limited the right of contract; (2) it discriminated between the vendors of labor; and (3) between vendors and purchasers of commodities. (234 U. S. 199, 209.)

The first specification was based upon the argument that because (it was claimed) the State court had found that benefit, not injury, to the public had resulted from the combination, it could not constitutionally be condemned.

This Court, by Mr. Justice McKenna, said (pp. 209-210):

The specification under this head is that the Supreme Court (of Missouri) found, it is contended, benefit—not injury—to the public had resulted from the alleged combination (International Harvester Company). Granting that this is not an overstatement of the opinion, the answer is immediate. It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intention and has had some good effect. * * * The purpose of such

statutes is to secure competition and preclude combinations which tend to defeat it.

And continued :

It is true the Supreme Court did not find a definite abuse of its powers by plaintiff in error, but it did find that there was an offending against the statute, a union of able competitors and a cessation of their competition, and the court said (p. 395): "Some of the smaller concerns that were competitors in the market have ceased their struggle for existence and retired from the field." This is one of the results which the statute was intended to prevent, the unequal struggle of individual effort against the power of combination.

The preservation of the competitive system is as much the purpose of the Sherman Law as of the Missouri Statute, and the only possible distinction of the Missouri case that could be asserted would be that the Missouri Statute differs from the Sherman Law in that it is directed specifically at combinations having the tendency or effect to lessen competitive conditions. But what is expressed in the Missouri Statute necessarily is implied in the Sherman Law. It is clear that this Court had in mind all antitrust laws, including the Sherman Law, when it said (234 U. S. 209) :

The purpose of such statutes is to secure competition and preclude combinations which tend to defeat it.

In *United States v. Joint Traffic Ass'n*, 171 U. S. 505, 571, it was said:

It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all the matters over which the combination extends, that constitutes the alleged evil * * *.

In the *Northern Securities case*, 193 U. S. 197, 337, Mr. Justice Harlan, announcing the affirmance of the decree of the Circuit Court, said:

In all the prior cases in this court the Anti-Trust Act has been construed as forbidding any combination which by its necessary operation destroys or restricts free competition among those engaged in interstate commerce; in other words, that to destroy or restrict free competition in interstate commerce was to restrain such commerce.

In *National Cotton Oil Co. v. Texas*, 197 U. S. 115, 129, this Court, referring generally to statutes prohibiting restraint of trade, said:

According to them, competition, not combination, should be the law of trade.

In *United States v. Union Pacific R. R. Co.*, 226 U. S. 61, 87, after repeating with approval these same passages, the opinion sums up the underlying purpose of the Antitrust Act as follows:

To preserve from undue restraint the free action of competition in interstate commerce

was the purpose which controlled Congress in enacting this statute, and the courts should construe the law with a view to effecting the object of its enactment.

Again, in *United States v. Reading Co.*, 226 U. S. 324, 353, it was said:

The evil is in the combination. Without it the several groups of coal-carrying and coal-producing companies have the power and motive to compete.

VI

Certain defenses considered

I. THE ATTEMPT TO PROVE THE EXISTENCE OF COMPETITIVE CONDITIONS BY THE NUMBER OF DEALERS HANDLING THE HARVESTING MACHINERY OF OTHER MANUFACTURERS

A. *The provision of the decree restricting the International Harvester Company to one dealer in each town*

Defendant's primary contention apparently is that the provision of the decree restricting the International Company to one dealer in a town has had the effect to restore competitive conditions, within the meaning of the decree, by making dealer material, formerly monopolized by it, available to competitors.

As already stated, the purpose of the decree was not merely to remove incidental barriers to competitive effort, but actually to restore competition, and thus to neutralize the potential power of the

International Harvester Company resulting from its control of so vast a proportion of the trade and commerce in harvesting machines. (*Supra*, pp. 22-23.)

A. E. McKinstry, Vice President of the International Harvester Company and President of the International Harvester Company of America (the selling agency), testified that pursuant to the decree, the International Company discontinued some 4,778 dealers who in the previous year had done a volume of business amounting to \$17,377,246.00 (R. 172), the implication being that the Company had surrendered that much business to its competitors. But when confronted on cross-examination with the fact that he had testified that in two years following the entry of the decree the International Company had more business than it could handle, he made this monumental explanation:

Our balance sheet would have been larger in 1919 and 1920 if we had not been deprived of the opportunity of doing business with these dealers. We had more business than we could handle. (R. 176.)

Not only did the dropping of these dealers come at a time when no loss could be inflicted upon the International Company, but it was in itself the mere culmination of a process which had been in progress several years. Mr. Legge, President of the Company, testified that between 1913 and 1918, when the decree was entered, the International had lost approximately 10,000 distributors. (R. 184.)

The witness assigned as the reason for this the change from the old system of commission contracts to outright sales contracts, which involved a credit element and resulted in the elimination of a good many accounts, and also the growing competition of Deere & Company and the others. (R. 184.)

Mr. Legge further testified on this point:

This reduction of distributors resulted in bunching the lines to maintain representation and protect the customers on repair service. Contracts for two or sometimes more lines were placed with the same dealer. The dealers did not take to that very kindly, as it involved an additional expense to them, duplicating repair stocks, and various other inconveniences, and did not give as efficient service on two or more lines made by the same manufacturer as they had given on the sale of a single line. As presented to us by our salesmen who were endeavoring to cover the territory on all lines, the dealers stated that this created confusion. Their facilities were not such that they could keep them separate without more or less expense, and the stock argument was that inasmuch as we owned both of the lines it did not make any difference to us whether they sold thirty machines of three different kinds or thirty of one line. Why should we insist on their carrying this duplication?

It thus appears that before the decree was entered the International Harvester Company, for purely economic reasons, was gradually getting its

business upon a single-dealer basis and was at the same time accomplishing that smothering of the Osborne, Champion and Milwaukee lines alleged in the supplemental petition. As illustrating the principles observed in determining which dealers would be rejected and which retained, Mr. McKinsty said (R. 176):

Generally speaking, prior to 1918 the Deering and McCormick lines were in the hands of more desirable and better equipped dealers than the Champion, Osborne, and Milwaukee lines. In discontinuing dealers we tried to retain the best dealers we had in a town.

It may be accepted from this testimony and from the table printed on page 186, that the International dealers, dealer for dealer, greatly excel those of any competitor. As indicating the special facilities enjoyed by International dealers, it was testified that the International Company—the only agricultural-implement concern engaged in the manufacture of motor trucks (Legge, R. 194)—put out a special offer of a light truck, referred to in the testimony as a "Red Top," for the use of its dealers (Brookbank, R. 180).

In addition, Petitioner's Exhibit (S) 3 (R. 396) shows some 25 retail implement companies, in eleven States, in which the International Harvester Company has a controlling stock interest. Thus the company is able itself to go into the retail im-

plement business whenever it considers that it is not receiving proper representation in a particular community.

B. The implement-dealer census of 1923

Beginning in June, 1923, and evidently in anticipation of the filing of the supplemental petition, the International Harvester Company caused a census to be taken by its representatives of the retail implement dealers in the territory between the Allegheny and the Rocky Mountains and north of the Ohio River. The results of the census are shown in Defendant's Exhibit (S) 6, identified by Mr. McKinstry. (R. 171.)

The summaries contained in the exhibit at first blush would impart to the International Company an insignificance which is ridiculous in view of its established size and dominance. But it must be remembered that the present proceeding has to do with an illegal combination of harvester manufacturers and consequently the summaries relating to dealers in other lines are wholly irrelevant. That leaves only column 4, "Number of implement dealers handling binders, mowers, or rakes," to be considered.

This column shows that in the territory in question there are 13,717 dealers handling machines of the class stated. Of these, 3,847 handle the International's goods only, 6,871 handle the goods of competitors exclusively, and 2,999 handle both the

goods of the International or of one or more of its competitors.

But it is evident upon consideration that such a summary is not an accurate reflection of competitive conditions. It in no wise discriminates between dealers in the amount of goods handled and sold. For example, in a given town, there might be just one established dealer with the full International line. It might so happen that the keeper of the general store would have competitive rakes for sale and the village blacksmith a competitive mower. In this census the town would be listed as having one International dealer and two competitive dealers, but clearly there would be no appreciable competition. This criticism applies equally to all summaries in the exhibit.

The Government offered in evidence statements showing the number of branch houses (Appendix K) maintained by the International Harvester Company and each of its competitors in the harvester line; also statements showing the number of dealers (Appendix K) handling the harvesting machines of the International and each of its competitors. These set up in comparative form, with a consideration of the number of machines sold by each, give a more accurate indication of the feebleness of the competition encountered by the International.

By dividing into the number of dealers handling the harvesting machines of each company, as shown,

the number of machines sold by each company, as shown by the tables in Appendix B (pp. 146-156) the misleading effect of the dealer census is fully exposed. Thus in 1920 the International Company sold on an average to each dealer 19.6 machines, while Deere & Company, its largest competitor, sold an average of only 7.7 machines. In 1923 the average for the International was 12.3, while the average for Deere & Company was only 4.3. The explanation of the comparatively high averages shown for some of the smaller companies is to be found in their limited territory.

C. The dealer testimony

In a further effort to prove the existence of competitive conditions resulting from the prohibition on more than one dealer in a town, the defense produced some 80 retail implement dealers. Thirty were International dealers and 47 were former International dealers who had changed to other lines subsequent to the decree.

Of these twenty-four testified that the independent dealers in their respective communities (usually themselves) did about as much business as the local International dealer, or that they received their share of the business, or that their business was favorable; seventeen testified that the business of the local independent dealers (usually themselves) was greater than that of their International rival;

while only nine admitted that in their respective communities the International dealer did the greater business.

Bearing in mind the overwhelming proportion of the total business controlled by the International Harvester Company as compared with the negligible amounts controlled by its competitors, and the wide spread between the average number of machines sold by the International to each of its dealers and the average number sold by each of its competitors to its dealers, this testimony indicates that the dealer witnesses were selected with such care that they do not fairly represent actual conditions. This character of evidence at best is of doubtful value, and is of no value where, as here, it is plainly contradicted by the exact figure showing the amount of business done by each company engaged in the manufacture and sale of harvesting implements.

On the trial under the original petition, no less than 803 retail implement dealers testified as to their freedom from coercion and as to the existence of competitive conditions. This testimony was disregarded by the court in view of the exact figures introduced by the Government establishing the International Harvester Company's dominance. Greater effect can not be given to the testimony of the 80 dealers brought forward under the supplemental petition.

2. THE CONTENTION THAT THE HARVESTER BUSINESS
NOW IS AN UNIMPORTANT PART OF THE COM-
PANY'S BUSINESS IN VIEW OF THE TREMENDOUS
INCREASE IN ITS NEW LINE BUSINESS

Having acquired a virtual monopoly of the trade in the principal harvesting machines, the International Company early decided to expand its business so as to take in other classes of agricultural implements as well; especially farm wagons, manure spreaders, harrows, cream separators, tractors, hay presses, corn shellers, farm engines, and plows. (Old Rec. Vol. I, p. 612-615; Silloway, R. 116, 261; Reay, R. 365.)

Its business in the new lines developed rapidly and in many it has become the leader. Thus it has become the leading manufacturer of cultivators and harrows, two important tillage implements. (Silloway, R. 260.)

When it decided to enter the seeding machine business it purchased outright the Richmond plant of the American Seeding Machine Company, paying for the plant alone a consideration of \$1,990,000. (Reay, R. 365-366.) In like manner, when it entered the plow business it bought the plant of the Parlin & Orendorff Company for \$2,300,000 and the plant of the Chattanooga Plow Company for \$550,000 (Reay, R. 366), and took its place as the third largest manufacturer of plows of all kinds (Oliver, R. 255; Silloway, R. 261).

The new line business having increased so enormously while the harvester business, being largely on a replacement basis, remained substantially the same, defendants now put forth the disproportion between the two classes of business as a reason for denying the additional relief prayed for in the supplemental petition.

The contention is irrelevant because the proceeding has to do only with an unlawful combination in harvesting machines. This unlawful combination continues to the present time and has not been destroyed by the decree of this Court. This combination is not rendered legal by the fact that, using it as a foundation, defendants have erected upon it an enormous business, bordering upon monopoly, in other lines.

From Petitioner's Exhibit (S) 135 (R. 558) it will be noted that the diminishing importance of the harvester or old line business, compared with the company's total business, is not due to any marked falling off in the business in the old lines. The total of \$25,276,325 of old line business increased to \$33,331,848 in 1919 and \$29,788,561 in 1920, when it fell off sharply due to the slump. The sole reason, therefore, for the apparent dwindling of the harvester line is that by reason of the virtual monopoly in that line defendant has been able to conquer many new fields.

An analysis of the total sales of the International Harvester Company follows, expressed

in percentages of total and allocated according to—

(1) Old line business; (2) new line business; (3) twine business; (4) purchased goods; (5) steel, lumber, and fiber.

SUMMARY OF TOTAL SALES, 1903-1923, INCLUSIVE, UNITED STATES BUSINESS PER CENT TO TOTAL

Statement showing per cents of (1) old-line business, (2) new-line business, (4) twine business, (5) purchased goods, (7) steel, lumber, and fiber business, transacted by the International Harvester Company, to the total business transacted in the United States, 1903-1923, inclusive, as appears from Exhibit P(8) 135, R. p. 558

Year	Total old-line business	Total new-line business	Grand total machines	Twine	Purchased goods	Totals, columns 3, 4, and 5	Steel, lumber, fiber, etc.	Grand total sales (amount)
	1	2	3	4	5	6	7	8
1903	62.0	5.3	67.3	30.3	-----	97.6	2.4	\$40,796,910
1904	60.4	5.7	66.1	26.3	0.1	95.5	4.5	35,965,387
1905	53.5	12.0	65.5	25.5	2.3	93.3	6.7	38,773,064
1906	44.4	23.7	68.1	20.3	.3	88.7	11.3	47,389,743
1907	41.6	27.1	68.7	17.1	.6	86.4	13.6	53,728,546
1908	39.4	30.6	70.0	16.6	1.0	87.6	12.4	47,705,082
1909	38.2	32.8	72.0	12.3	1.4	85.7	14.3	58,480,173
1910	36.6	34.8	71.4	11.5	1.5	84.4	15.6	66,970,303
1911	38.0	35.1	73.1	11.2	2.2	86.5	13.5	65,718,917
1912	35.5	34.4	69.9	13.2	2.8	85.9	14.1	74,541,141
1913	31.9	32.0	63.9	16.1	5.6	85.6	14.4	77,922,916
1914	35.6	29.4	65.0	18.9	5.4	89.3	10.7	69,685,130
1915	36.0	30.1	66.1	16.6	5.2	87.9	12.1	73,623,638
1916	28.2	33.3	58.5	15.0	4.1	77.6	22.4	79,115,255
1917	26.7	33.5	54.2	16.2	3.7	74.1	25.9	114,940,236
1918	16.4	36.9	53.3	19.6	3.3	76.2	23.8	157,438,735
1919	20.6	42.2	62.8	19.2	4.0	86.0	14.0	161,839,320
1920	18.1	52.0	70.1	12.0	2.1	84.2	15.8	164,443,379
1921	14.6	51.7	66.3	19.3	1.9	87.5	12.5	77,142,082
1922	14.1	58.4	72.5	12.7	1.5	86.7	13.3	94,481,167
1923	13.8	54.0	67.8	11.4	1.0	80.2	19.8	108,446,136

A review of these figures discloses that the per cent of total machine business transacted as compared to all business transacted remained practically the same throughout the entire 20 years.

In 1903 it was 67.3 per cent of the total, while in 1923 it was 67.8 per cent of the total.

It will also be observed that while there was comparatively no change in the per cent of total machine business transacted there was a decided reduction in the per cent of the business transacted as reflected in the sale of old-time machines from 1903 to 1923. In 1903 the old-line machine business amounted to 62.0 of the total, while in 1923 it only amounted to 13.8 per cent of the total, a difference of 48.2 per cent.

The new-line machine business was automatically increased in practically the same proportion. In 1903 the new-line machine business only amounted to 5.3 per cent of the total business transacted, while in 1923 it amounted to 54 per cent of the total business transacted, a difference of 48.7 per cent.

The total twine sales in 1903 was 30.3 per cent of the total, while in 1923 twine sales amounted to only 11.4 per cent of the total, a difference of 18.9 per cent.

The total combined sales of steel, lumber, and fiber in 1903 amounted to only 2.4 per cent of the total sales, while in 1923 the combined sales of steel, lumber, and fiber amounted to 19.8 per cent of the total sales, a difference of 17.4 per cent.

The total sales of the International Harvester Company in 1903 amounted to \$40,766,810. In 1923 they amounted to \$108,446,136, or an increase of \$67,679,326, or 166 per cent.

In view of the large increase in total business it is remarkable that the per cent of total sales of machines of all kinds remained practically the same throughout, except during 1916, 1917, and 1918. For those years it appears that the deflation in the sales of machines was practically offset by the inflation in the sales of steel, lumber, and fiber.

The per cent of total sales of machines and for steel, lumber, and fiber for 1915-1919 is as follows:

Year	Grand total sales of machines	Sales of steel, lumber, and fiber	Total column 1 plus column 2
	1	2	3
1915.....	96.1	12.1	78.2
1916.....	98.2	22.4	80.9
1917.....	94.2	32.9	86.1
1918.....	53.3	23.8	77.1
1919.....	62.8	14.9	78.8

The figures for 1915 and 1919 are given for reference purposes only, so that the transitions as to inflations and deflations may be more apparent.

3. THE CONTENTION THAT A SEPARATION OF THE MCCORMICK AND DEERING LINES IS IMPRACTICABLE

Following the entry of the decree in 1918 the defendants began to lay plans for combining the McCormick and Deering lines into a single line. Mr. Legge, the president, and Mr. Jones, sales manager, assigned as reason for this the requirement of the decree that the company confine its business to one dealer in a town.

According to Kimbark, of the engineering department, a combined McCormick-Deering binder was experimented with in 1920. (R. 247.) The main frame was of the Deering type, but it embodied the McCormick cutting apparatus and elevator and required some redesigning. (R. 247.) It carries no new, distinct, or patented features, is a mere combination of the two machines. (Legge, R. 213.)

Approximately 100 of these machines were sold for the 1921 trade, but they proved defective and were recalled. An improved machine was turned out for the 1922 season and several hundred were sold. In 1923 about 5,000 were manufactured, but all of these were not put out. (Kimbark, R. 247.)

Assuming that the purpose in developing this combined machine was as claimed and not merely to place an obstacle in the way of granting the further relief for which the Government was bound to ask under the decree, it is evident from the testimony of both Legge and Kimbark that the production and sale of the new machine has not been carried to a point which will make impracticable the separation of the McCormick and Deering lines.

Mr. Legge testified as follows (R. 213):

The patterns, jogs, dies, etc., for the McCormick line and Deering line have not been destroyed.

The company, if it were to its interest, could resume the production of the McCormick and Deering machines in the course of a little time. There is nothing impossible

from a mechanical standpoint for us or anyone else doing that.

Mr. Legge testified (R. 192):

In our domestic factories we are no longer making the two lines known as Deering and McCormick, except, as I said, a few machines on foreign contracts which we have not yet been able to bring to the new model.

But Mr. Kimbark's testimony does not tally with Legge's on the point that there has been a discontinuance of the production of McCormick and Deering machines. On cross-examination by Government counsel he said (R. 247-248):

Five thousand binders was not the total production of the Harvester Company in 1923. The McCormick and Deering were also made. The present capacity of the International to produce these combined machines is twenty thousand, and the capacity to produce McCormick and Deering machines is a hundred thousand. The McCormick works are still equipped to manufacture McCormick machines and the Deering to manufacture Deering machines.

Petitioner's Exhibit (S) 4 (R. 397), sworn to by Reay, the Comptroller, indicates that Kimbark was better informed than his chief. The Company's sales of binders in 1923 were 30,161, of which only 3,314 were of the hybrid variety. Fifteen thousand six hundred and fifty were McCormicks, 11,171 were Deerings, and 26 were the Milwaukee brand, recently sold to the faltering Moline Plow Company.

It is submitted, therefore, that this attempted consolidation of lines, whatever the motive that suggested it, has not made impracticable or difficult the separation of the unlawfully combined McCormick and Deering lines, and certainly affords no defense to the supplemental petition of the Government praying such relief. Such a separation is no more difficult to bring about to-day than in 1911, when it was proposed by the company in settlement of its differences with the Government. (R. 207-208.)

4. THE CONTENTION THAT THIS PROCEEDING IS CONTROLLED OR AFFECTED BY THE DECISION IN THE STEEL CASE

The *Harvester case* and the *Steel case* stood together on the docket of this Court for a number of years, including the time that the United States was at war. The International Harvester Company, for reasons of its own, sought a settlement of its case, dismissed its appeal, and accepted the decree which was entered by the District Court on November 2, 1918.

The *Harvester case* had been decided in favor of the Government by the District Court. In addition, this Court had decided the case of *International Harvester Co. v. Missouri*, 234 U. S. 199, in a way which clearly foreshadowed an affirmance in the *Harvester case*.

The Steel Corporation, on the other hand, had prevailed in the District Court, and its situation had never been considered by this Court in a way

which gave any indication as to how it might decide the case. The *Steel case* was heard at the October Term, 1919, and the decree of the District Court, dismissing the Government's petition, was affirmed. (251 U. S. 417.)

Clearly, therefore, the decision in the *Steel case*, rendered subsequent to the decree in this case, can have no bearing upon the present proceeding, which has for its sole purpose the giving effect to said decree, which stands unmodified and unreversed. Any other view would imply that parties against whom a decree has been taken are relieved of all compulsion to observe the decree in case the court entering it, or some superior court, shall later express a different view of the law from that under which the decree was entered.

But the contention necessarily presupposes that the *Harvester case*, had it not been settled by the defendant, would have taken the same course as the *Steel case*. Such a view would ignore important points of distinction between the cases noted in the *Steel* decision. In the *Steel case* the Court found that monopoly was not achieved, because while the power attained by the United States Steel Corporation was greater than that possessed by any one competitor, it was not greater than that possessed by all of them, and competitors had to be persuaded by pools, associations, trade meetings, dinners, etc., to keep in line (251 U. S. 444-445). In the present case it is shown that the International Harvester Company completely dominates prices (ex-

cept those of the Minnesota State Prison), without reference to competitors.

Moreover, in determining the purposes of the Steel Corporation and the motives of its organizers, this Court laid much stress upon "the influence of the tendency and movement to integration, the appreciation of the necessity or value of the continuity of manufacture from the ore to the finished products." (251 U. S. 442.) The *Harvester* case involved simply a horizontal combination of competing harvester companies; the company developed its new lines after its formation, and acquired its plow factories and seeding-machine plant since 1918.

Finally, the steel industry being vastly greater than the harvester industry, the control by the two companies of the same percentage of each would leave a much larger field to be occupied by relatively stronger companies in the case of the steel industry than in the case of the harvester industry. Actually, however, the International Harvester Company to-day controls a higher percentage of the harvester trade than the Steel Company did at the time of the decision; and, of course, the Harvester Company has no such able competitor as, say, the Bethlehem Steel Company.

The *Steel* case presented a record of the efforts of the Steel Company to keep its competitors in line; this case presents the story of the dominance of the Harvester Company and of the unsuccessful efforts of the smaller companies to compete with it.

5. THE CONTENTION THAT THE FAILURE OF THE DECREE TO ACHIEVE ITS DECLARED PURPOSE TO RESTORE COMPETITIVE CONDITIONS IS EXCUSED BY EVIDENCE RELATING TO THE DEPRESSION OF THE FARM-IMPLEMENT BUSINESS DURING THE TEST PERIOD

A large portion—one might almost say the major portion—of defendant's record is taken up with the evidence of bankers, farm-bureau men, farmers, implement manufacturers, and implement dealers to the effect that during the years 1921 and 1922 there was a sudden and drastic decline in the prices of farm products which impaired the ability of the farmers to purchase farm machinery, the inference being that this condition, and not the monopolistic practices of the International Harvester Company, was responsible for the falling off in the amount of competition during those years.

All such testimony was taken subject to the following general objection, to which Government counsel noted a reference from time to time (R. 172):

Petitioner makes the following objection to all testimony of this character, namely, that it has no bearing on the question whether the decree of 1918 has had the effect to restore competitive conditions in the harvesting machine industry, which is the only issue in the cause, since the considerations attempted to be set up as a defense manifestly would not excuse the performance of an ordinary commercial contract, much less would excuse compliance with, or be permitted to defeat the purpose of, the

decretal order entered in pursuance of an agreement between the United States and the defendants herein, and especially in view of the fact that the test period set up in the decree was at the request of the defendants.

When the provision for the test period was written into the decree it must have been known, at least experience should have taught that the close of a great war almost always is followed by a period of depression. In fact, as testified on cross-examination by defendant's witness Oliver, the industrial history of the country is largely one of alternating periods of inflation and depression. (R. 251, 254.) This witness, who by reason of his long experience in the implement business was admirably qualified to testify on the subject, was unable to name a "normal" year in the last decade (R. 254):

Regarding the period from 1914 on, that was during the period of the war, and there was a changed condition that kept up during all that period. Some were abnormally good, some abnormally bad. The last three years were horribly bad.

It is respectfully submitted, therefore, that this great mass of evidence as to agricultural and industrial conditions during the test period is wholly irrelevant and should be disregarded.

CONCLUSION

Whatever differences of opinion there may be as to the wisdom of the policy, Congress by the Sher-

man Act (c. 647, 26 Stat. 209); by the Wilson Act (c. 349, 28 Stat. 570; c. 40, 37 Stat. 667); by the Panama Canal Act (c. 390, 37 Stat. 560); by the Federal Trade Commission Act (c. 311, 38 Stat. 717); and by the Clayton Act (c. 730, 38 Stat. 730), has ordained the competitive system of industry in the United States. And in passing the Webb Export Act authorizing associations in foreign trade Congress expressly reaffirmed that policy, declaring as a condition—

That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein. (c. 50, 40 Stat. 516.)

Like conditions are to be found in the more recent Capper-Volstead Act, authorizing associations of producers of agricultural products (c. 57, 42 Stat. 388), and the Packers and Stockyard Act, providing for the regulation of interstate and foreign trade and commerce in livestock, etc. (c. 64, 42 Stat. 159).

It is clear, therefore, that the Congress has never departed from the policy of competition first ordained in the Sherman Act, and since reiterated and reaffirmed. The history of the times, the debates in Congress, the circumstances surrounding

the passage of the Sherman Law, make it equally clear that it was aimed primarily at the great corporate combinations. The loose combinations, such as trade associations and the like, to which the Sherman Law was later applied, were comparatively unknown in 1890.

Not only has Congress pursued an unswerving course, but this Court has at all times given full effect to the policy thus established. The recent decisions of the Court attest its purpose to apply the law to every situation that is restrictive of competitive conditions. The *Reading* and *Lehigh Valley* cases were cited in the early part of the brief (*supra*, pp. 25-29). They can be distinguished from the present case only upon the fanciful ground that this Court, in dealing with combinations in transportation (the most regulated of all businesses), applies a more stringent rule than when dealing with combinations in industry at which the law was specifically directed.

The *Hardwood* and *Linsced Oil* cases, *supra*, p. 92), illustrate the vigorous manner in which the law is applied to loose combinations among competitors to restrict competition. The differences between such combinations and corporate combinations by merger or stock ownership demonstrate the greater necessity for applying the law to combinations of the latter class. In such combinations all independence is destroyed; no opportunity for the display of individual initiative remains; the combination is perpetual. Can the law be reduced

to such absurdity that it may be applied to a loose association whose members control about 30 per cent of an industry and not to a corporate combination controlling more than 50 per cent of an industry?

As stated in the *Standard Oil case*, the purpose in decreeing the dissolution of a corporate combination is twofold (221 U. S. 78) :

1. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the Statute.

2. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.

In giving effect to the second purpose this Court has insisted that dissolutions should be thorough and effective. Thus in the *Union Pacific case* the court rejected the proposal for the distribution of the stock of the subsidiary company among the stockholders of the parent company. (226 U. S. 470.) And when the *Reading case* came to this Court on an appeal from the final decree by certain minority stockholders, the court *sua sponte* ordered the case remanded for the purpose of amending the decree by providing for a division of a joint mortgage covering the property of two of the subsidi-

ary companies, further to insure their separation and independence. (259 U. S. 156.)

Upon the record presented can it be seriously contended that the purpose in decreeing a dissolution has been achieved? Has the International Harvester Company by disposing of a few relatively unimportant trade names and a small amount of machinery done anything to "neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about"? Not only has there not been a restoration of competitive conditions even approximating those of 1902, but conditions have not improved over 1918, when the decree was entered.

It is respectfully submitted that one of two things ought to be done—either the eminent judges who originally decided this case ought to be reversed upon the ground that their decision was wholly erroneous and that there never was justification for any form of dissolution, or else an effective dissolution should be decreed.

WILLIAM G. MITCHELL,

Solicitor General.

WILLIAM J. DONOVAN,

Assistant to the Attorney General.

MARY G. CONNOR,

Special Assistant to the Attorney General.

OCTOBER, 1926.

APPENDIX A

Grain binders.—Statement showing number of grain binders sold by the International Harvester Company for domestic trade in the United States, 1905-1923, inclusive, by lines, as appears from page 729 of old record International Harvester Company v. United States, and from Exhibit P(S) 2, R. 597, and R. 570, and the per cent of number sold of each line to the total number sold by the company for each of the years under review, as computed by the Government

Season	Champion		Deering		McCormick		Milwaukee		Osborne		Fargo		Keystone and others		Total	
	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent
1903	11,064	10.6	33,956	32.7	23,828	22.6	9,896	9.6	6,372	6.1	8,796	8.4			100,942	100.0
1904	8,963	10.3	26,532	34.2	27,613	32.1	7,673	8.9	6,776	7.8	5,797	6.7			86,234	100.0
1905	5,963	6.6	35,941	39.8	33,968	37.6	5,413	6.0	4,302	4.9	4,997	4.4			90,375	100.0
1906	4,737	5.1	36,728	41.9	35,820	38.7	5,139	5.5	4,995	5.4	3,047	3.3			92,574	100.0
1907	4,270	4.7	37,300	41.8	35,393	38.5	5,355	6.0	4,867	5.5	2,146	2.4			86,626	100.0
1908	2,000	3.1	28,736	44.7	26,793	41.6	3,615	5.6	2,164	3.4	1,006	1.5			64,366	100.0
1909	2,309	2.7	38,789	45.1	36,287	42.2	4,423	5.2	3,202	3.7	914	1.1			85,006	100.0
1910	2,541	2.7	41,701	44.9	38,416	41.3	5,360	5.8	4,217	4.6	686	.7			92,937	100.0
1911	2,469	2.8	44,435	48.7	39,960	41.1	5,737	6.0	4,316	4.4	447	.4			97,335	100.0
1912	2,441	2.2	51,540	46.2	47,663	42.8	5,851	5.3	3,568	3.2			384	.3	111,447	100.0
1913	1,701	1.8	44,990	46.5	42,347	43.8	4,024	4.1	3,399	3.5			289	.3	98,750	100.0
1914	1,481	1.5	46,980	46.4	45,132	44.5	3,948	3.9	3,604	3.5			220	.2	101,365	100.0
1915	1,452	1.3	54,769	47.5	51,443	44.6	3,905	3.4	3,430	3.0			211	.2	115,303	100.0
1916	698	1.0	33,978	49.0	30,536	44.0	1,709	2.5	2,238	3.2			170	.3	69,329	100.0
1917	495	.7	33,392	48.4	31,183	45.1	1,969	2.4	2,308	3.3			74	.1	68,121	100.0
1918	474	.7	31,918	48.2	31,164	47.1	1,165	1.8	1,374	2.1			87	.1	66,182	100.0
1919			46,694	47.7	50,052	51.0	1,226	1.2					105	.1	98,077	100.0
1920			52,120	46.0	37,439	53.7	173	.2					48	.1	69,780	100.0
1921			8,537	46.9	10,794	53.1	4								20,336	100.0
1922			12,644	41.3	17,663	57.7	57	.2					1250	.8	30,344	100.0
1923			11,171	37.0	15,650	51.9	26	.1					13,314	11.0	30,161	100.0

¹ McCormick-Deering line, Mar. 1922, 286; 1923, 3,214.

Reapers—Statement showing number of reapers sold by the International Harvester Company for domestic trade in the United States, 1905-1922, inclusive, by lines, as appears from page 780 of old record, International Harvester Company v. United States and from Exhibits P(S) 4, R, 557, and H, 570, and the per cent of number sold of each line to the total number sold by the company for each of the years under review, as computed by the Government

Reapers	Champion		Deering		McCormick		Milwaukee		Cubana		Fargo		Keystone and others		Total	
	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent
1905	669	8.2	1,480	28.3	2,107	44.5	317	5.6	1,113	9.8	212	5.5	5	0.2	5,427	100.0
1906	1,029	8.0	1,655	28.6	3,155	41.6	174	4.6	1,427	14.4	137	3.6			3,787	100.0
1907	211	6.1	1,622	28.7	3,162	44.9	179	5.2	431	12.4	50	1.7	1		3,476	100.0
1908	281	7.1	1,654	28.4	3,462	44.4	149	4.4	462	14.4	43	1.2			3,361	100.0
1909	187	6.0	1,794	28.9	3,229	43.3	119	3.3	366	14.4	16	0.6			2,751	100.0
1910	122	4.9	1,780	28.5	3,223	43.7	97	3.9	258	10.3	12	0.3			2,462	100.0
1911	97	4.6	1,611	24.1	3,064	47.6	87	4.2	246	11.6	9	0.5	5	0.2	2,060	100.0
1912	111	4.3	1,645	24.0	3,250	50.3	64	3.7	224	12.7	10	0.4	6	0.2	2,465	100.0
1913	56	2.6	1,790	25.0	3,043	47.7	75	3.4	243	11.1	6	0.2	4	0.2	2,322	100.0
1914	122	3.2	1,777	25.5	3,111	48.6	92	3.9	246	10.6			1		1,934	100.0
1915	29	1.6	1,621	24.4	3,066	48.9	91	3.0	146	10.1			6	0.3	1,825	100.0
1916	26	2.0	1,691	24.2	3,019	48.9	80	2.8	136	7.6			6	0.3	1,779	100.0
1917	40	2.3	1,725	24.3	3,027	48.5	35	2.0	73	4.5					1,418	100.0
1918	14	0.9	1,787	24.5	3,132	48.5	41	2.5	73	4.5					1,214	100.0
1919	20	2.1	1,680	24.0	3,086	48.2	29	1.7	91	7.5					1,042	100.0
1920			1,649	23.3	3,050	48.8	11	0.9							1,272	100.0
1921			1,611	23.3	3,040	48.8									1,172	100.0
1922			1,577	22.1	3,067	48.9									1,042	100.0
1923			1,543	22.1	3,067	48.9									1,042	100.0
1924			1,506	21.9	3,041	48.9									1,042	100.0

* McCormick Deering Line, 177 in output 13 for 1922.

Headers and push binders—Statement showing number of headers and push binders sold by the International Harvester Company for domestic trade in the United States, 1903-1923, inclusive, by lines as appears from page 731 of old record International Harvester Company v. United States, and from Exhibit P (S) 4, R. 397 and R. 570, and the per cent of number sold of each line to the total number sold by the company for each of the years under review, as computed by the Government.

Season	Champion		Ewing		McCormick		Milwaukee		Osborne		Plano		Keystone and others		Total	
	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent	Num-ber	Per cent
1903	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1904			1,346	25.4	1,900	36.2					540	14.4			3,796	100.0
1905			1,183	26.4	1,450	28.9					453	14.7			3,086	100.0
1906			2,052	42.6	2,328	46.4	22	0.4			411	8.6			4,813	100.0
1907	184	3.5	2,241	42.3	2,550	48.3					311	5.9			5,286	100.0
1908	322	5.9	2,123	38.9	2,792	49.5					304	5.5	13	0.2	5,464	100.0
1909	154	3.7	1,698	41.3	2,196	51.2					187	3.9			5,115	100.0
1910	180	4.1	2,001	43.6	2,233	48.7					166	3.6	1		4,587	100.0
1911	210	3.8	2,527	46.1	3,437	54.3			13	0.2	132	2.1			6,329	100.0
1912	114	2.7	1,797	41.3	2,329	53.9			13	0.3	79	1.8			4,321	100.0
1913	165	2.8	2,31	41.6	3,036	53.6							114	2.0	5,308	100.0
1914	143	2.7	2,173	41.0	2,864	54.5							95	1.8	5,265	100.0
1915	106	3.1	2,619	49.8	3,466	54.3							165	1.6	5,419	100.0
1916	135	2.7	2,987	41.0	4,005	55.9							93	1.3	7,260	100.0
1917	125	2.5	2,186	39.6	3,100	57.5							24	0.4	5,395	100.0
1918	90	2.1	2,309	47.6	2,434	50.2							6	0.1	4,937	100.0
1919	74	1.6	2,088	43.8	2,600	52.6							1		4,763	100.0
1920			2,413	44.4	3,025	55.6									5,438	100.0
1921			1,726	38.4	2,773	61.6									4,509	100.0
1922			1,221	43.1	1,480	54.9									2,711	100.0
1923			1,166	66.7	581	33.3									1,747	100.0
			296	28.5	61	5.8							1,083	65.7	1,040	100.0

¹ McCormick Ewing Line 603, in column 13 for 1923.

The following table is similar until 1923 when the McCormick and the Deering machines were changed to the McCormick-Deering machine by the application of paint and stencil.

Rates, exclusive of side delivery and sweep rates.—Statement showing number of rates (not including sweep rates and side-delivery rates) sold by the International Harvester Company for domestic trade in the United States, 1903-1923, inclusive, by lots, as appears from page 734 of old record of International Harvester Company v. United States and from Exhibits P(S) 4, R 397 and R 570, and the per cent of number sold of each lot to the total number sold by the company for each of the years under review as computed by the Government

Year	Champaign		Deering		McCormick		Moline		Rockford		Plainfield		Keokuk and others		Total	
	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent
1903	28,352	18.0	45,396	28.9	52,973	33.7	4,361	2.8	13,559	8.6	12,547	8.0			137,100	100.0
1904	14,930	12.5	23,110	27.6	41,791	27.2	5,001	3.0	15,296	12.8	5,534	4.7			119,108	100.0
1905	11,756	10.3	14,871	20.6	47,166	41.4	4,029	4.1	12,343	10.8	3,183	2.8			113,868	100.0
1906	10,123	9.3	13,235	20.6	47,284	43.5	3,976	3.7	11,774	10.9	2,113	2.0	97	0.2	108,002	100.0
1907	10,284	8.5	17,111	26.6	53,962	44.5	3,459	3.7	13,116	10.8	2,970	3.7	232	0.2	121,264	100.0
1908	7,783	7.2	11,796	21.1	46,719	45.7	3,806	3.9	11,153	10.9	1,228	3.1	185	0.2	102,330	100.0
1909	6,448	6.6	12,626	21.5	48,242	46.6	3,564	3.5	11,197	10.8	770	0.8	263	0.2	103,474	100.0
1910	6,327	5.8	13,063	22.9	49,522	46.5	3,273	3.1	11,266	10.6	882	0.8	263	0.2	105,564	100.0
1911	5,662	5.7	10,175	23.6	41,063	45.7	2,918	3.2	10,116	11.2	413	0.5	134	0.1	89,912	100.0
1912	5,242	5.4	13,190	34.1	44,673	45.9	3,119	3.2	10,059	10.9			452	0.5	97,330	100.0
1913	3,914	4.1	13,591	35.2	43,546	47.6	2,473	2.6	11,150	11.7			364	0.4	95,440	100.0
1914	2,761	3.7	16,991	35.6	34,492	42.6	2,032	2.0	16,969	11.9			480	0.6	75,985	100.0
1915	2,731	3.7	15,729	35.6	33,891	40.2	2,090	2.9	7,829	10.8			505	0.7	72,116	100.0
1916	1,944	2.7	16,587	36.5	33,401	40.5	1,932	2.6	8,329	11.5			73	0.1	72,670	100.0
1917	1,006	2.2	23,461	56.7	31,635	46.6	1,310	2.0	6,800	10.5			17	0.1	65,928	100.0
1918	475	1.3	12,773	30.1	17,762	30.7	588	1.7	3,753	10.6			1	0.1	35,370	100.0
1919			13,795	30.9	20,027	36.6	590	1.7							34,326	100.0
1920			15,240	38.0	25,699	40.6	836	2.0							42,732	100.0
1921			6,316	16.2	10,196	21.8	3	0.0							16,510	100.0
1922			13,272	33.2	10,660	24.4	81	0.2							24,039	100.0
1923			4,085	14.8	1,965	7.2	30	0.1							27,427	100.0
															31,517	77.9

McCormick Deering Line to column 12, 21,517 for 1923.

Side delivery values.—Statement showing number of side delivery values sold by the International Harvester Company for domestic trade in the United States, 1923-1925, inclusive, by lines, as appears from page 738 of old record *International Harvester Company v. United States*, and from Exhibits P(S) 4, R 397 and R 370, and the per cent of number sold of each line to the total number sold by the company for each of the years under review, as computed by the Government

Source	Champion		Overing		MacFarland		Milwaukee		Columbia		Fargo		Keystone and others		Total	
	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent
1923	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1924	124	3.9	329	14.2	1023	15.4	111	2.5	1065	12.1	20	0.6	1,327	100.0	1,329	100.0
1925	184	2.7	1,044	24.9	1,087	27.4	207	4.3	1,077	17.4	62	1.0	1,435	44.9	3,175	100.0
1926	369	4.0	2,069	36.7	2,908	34.0	420	5.0	1,416	16.0	44	0.5	667	22.2	5,164	100.0
1927	364	3.1	2,443	31.2	3,035	35.0	440	5.3	1,341	15.0	27	0.4	700	8.0	8,376	100.0
1928	373	3.4	2,846	36.6	3,166	34.0	417	4.3	1,265	15.1	17	0.2	700	8.3	8,406	100.0
1929	122	2.0	2,437	30.3	2,745	34.4	665	8.6	1,809	22.4	23	0.4	276	4.7	7,366	100.0
1930									2,647	31.9			1,673	68.1	8,276	100.0
1931									3,272	32.9			1,673	47.1	9,943	100.0
1932									3,701	33.7			1,740	56.3	11,105	100.0
1933									4,119	36.3			1,740	53.7	11,249	100.0
1934									6,106	34.6			1,726	68.4	11,485	100.0
1935									3,804	37.9			1,625	62.1	10,059	100.0
1936									2,127	26.0			1,577	64.0	5,809	100.0
1937													1,526	100.0	5,209	100.0
1938													1,506	100.0	4,308	100.0
1939													1,709	100.0	4,299	100.0
1940													1,709	100.0	280	100.0
1941													194	100.0	54	100.0

(1) Of these side-delivery values, I. H. C. reports value of "International" as follows: 1912, 654, 1913, 833, 1914, 961, 1915, 829, 1916, 44, 1917, 100, 1918, 131, 1919, 1,431, 1920, 1,716, 1921, 709, 1922, 200, 1923, 34.

Toddler—Statement showing number of toddlers sold by the International Harvester Company for domestic trade in the United States, 1903-1923, inclusive, by lines, as appears from page 759 of old record, International Harvester Company v. United States, and from Exhibit P (S) 4, R. 397, and R. 570, and the per cent of number sold of each line to the total number sold by the company for each of the years under review as computed by the Government

Statement	Champion		Deering		McCormick		Milwaukee		Cubense		Packer		Keystone and others		Total	
	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent
1903	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1904	31	6.6													6,894	100.0
1905	1,555	11.4	1,527	11.1	1,870	13.6	283	2.1	8,242	60.6	245	1.8			13,774	100.0
1906	3,560	8.7	5,462	25.0	6,238	36.1	614	2.6	9,196	36.1	254	1.7	98	0.4	23,680	100.0
1907	1,795	6.4	4,780	25.4	5,618	30.9	641	4.5	5,814	30.8	176	0.9	214	1.1	18,846	100.0
1908	660	5.4	3,434	27.0	4,120	32.4	556	4.1	3,600	28.2	94	0.7	283	2.2	12,766	100.0
1909	1,082	5.4	5,474	28.6	6,548	35.7	743	3.6	5,036	26.1	136	0.6	462	2.4	19,411	100.0
1910	643	5.2	3,509	28.9	4,756	33.8	683	3.9	3,166	25.8	77	0.6	223	1.8	12,362	100.0
1911	934	6.8	4,627	31.8	4,981	34.2	572	3.9	3,387	23.2	61	0.4	244	1.7	14,271	100.0
1912	320	4.8	2,076	20.2	2,356	23.1	310	6.5	1,985	27.3	13	0.1	78	1.0	6,936	100.0
1913	266	6.0	1,967	23.4	1,701	26.8			1,894	29.9			580	13.9	6,342	100.0
1914	285	4.1	2,675	24.4	2,320	27.3			2,628	31.0			1,078	17.7	8,491	100.0
1915	340	4.5	1,795	25.2	2,063	26.0			2,160	30.3			814	11.4	7,127	100.0
1916	272	3.9	1,833	23.4	2,016	25.7			2,502	31.9			1,141	14.5	7,839	100.0
1917	8	0.1	1,825	34.7	2,190	29.3			3,020	34.1			660	9.0	7,516	100.0
1918	8	0.1	1,810	32.2	2,308	26.2			3,692	36.6			1,101	11.2	9,785	100.0
1919			1,840	27.2	1,654	26.5			1,562	32.0			551	11.2	4,935	100.0
1920			919	26.8	1,079	30.2							1,478	43.0	3,436	100.0
1921			774	23.6	796	24.5							1,711	52.1	3,284	100.0
1922			851	24.8	866	25.9							608	49.2	1,415	100.0
1923			470	28.3	496	25.3							978	56.4	1,938	100.0
			98	7.1	101	7.2							1,198	85.7	1,397	100.0

¹ McCormick Deering line, 1,198, in column 13 for 1923, and in addition sold 8,963 combined side rakes and toddlers in 1923.

Allen Co.	443	7	443	1
Reuben S.				
Yale (Hogewald)		150	9	100
Managers				10
Kovach	15		12	16
Holt	16			16
Harris Mfg. Co.				200
Cum				124
Itabon National				13
Seville				1
Advance Binding				
Total	134,620	20,427	135,047	100.0
Per cent of total for year	34.6	6.3	30.9	100.0
			15.6	4
			6.0	100.0

International sold from McArthur's plant, grain binders, 30,612; corn binders, 8,370; mowers, 46,800; rakes, 106,027; sickle and combined rakes and sickles, 1,038; binders and push binders, 3,023; total, 126,027, or 33.1 per cent of the total number sold by all companies.

¹ All machines made by the I. H. Co.

² Manufacture of harvesting machines now discontinued.

³ Avery for 1919 included in 1920.

⁴ W and reported as haystackers and binders.

⁵ Of the 200 harvester threshers sold by Holt, 105 were bought from the Northern Co.

NOTE.—All rakes not otherwise specified are included in column "sickle delivery rakes, including sweep rakes."

Manufacturer	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Kearns *																					
Holt *																					
Harris Manufacturing Co.																					
Case																					
John National																					
Raybide																					
Advance-Humby																					
Total	20,124	100.0	5,027	25.0	69,843	346.0	633	3.1	3,617	18.0	24,048	120.0	10,671	53.0	8,940	44.0	2,269	11.0	167,622	832.0	100.0
Percent of total for year	18.0		5.4		61.6		6		2.2		20.3		6.0		5.3		1.4		100.0		

* International sold from McCormick plant. Grain binders, 10,794; corn binders, 2,854; mowers, 22,019; rakes, 330; silky rakes, 10,196; tedders and combined tedders and sickle rakes, 296; bushers and pitch bushers, 1,690; total, 68,693, or 28.7 per cent of total tractors sold by all companies.

† All machines made by the I. H. Co.

‡ Massey-Harris rakes include 4 reaper thrashers.

§ Manufacture of harvesting machines now discontinued.

¶ Avery binders include 216 path harvesters.

‡ Wood reported as "harvesters" and "binders."

* Thomas "mowers" include 48 designed for tractors.

† Of the 282 harvester thrashers sold by Holt, 145 were bought from the Northwest Co.

Note.—All rakes not otherwise specified are included in column (sickle-delivery rakes including sweep rakes).

HARVESTING MACHINES SOLD IN THE UNITED STATES IN 1922

Statement showing number of harvesting machines sold in the United States in 1922, as appears from Exhibit P(S) 4, R. 397, 398, 401, 405, 407, 411, 418, 420, 423, 426, 428, 431, 432, 435, 438, 441, 442, 445, 448, 450, 453, 456, 459, 461, 464, 467, 469, 472, 474, 476, 479, 482, 484, 487, 489, 492, 494, 497, 499, 502, 505, 508, 511, 514, 517, 520, 523, 526, 529, 532, 535, 538, 541, 544, 547, 550, 553, 556, 559, 562, 565, 568, 571, 574, 577, 580, 583, 586, 589, 592, 595, 598, 601, 604, 607, 610, 613, 616, 619, 622, 625, 628, 631, 634, 637, 640, 643, 646, 649, 652, 655, 658, 661, 664, 667, 670, 673, 676, 679, 682, 685, 688, 691, 694, 697, 700, 703, 706, 709, 712, 715, 718, 721, 724, 727, 730, 733, 736, 739, 742, 745, 748, 751, 754, 757, 760, 763, 766, 769, 772, 775, 778, 781, 784, 787, 790, 793, 796, 799, 802, 805, 808, 811, 814, 817, 820, 823, 826, 829, 832, 835, 838, 841, 844, 847, 850, 853, 856, 859, 862, 865, 868, 871, 874, 877, 880, 883, 886, 889, 892, 895, 898, 901, 904, 907, 910, 913, 916, 919, 922, 925, 928, 931, 934, 937, 940, 943, 946, 949, 952, 955, 958, 961, 964, 967, 970, 973, 976, 979, 982, 985, 988, 991, 994, 997, 1000, 1003, 1006, 1009, 1012, 1015, 1018, 1021, 1024, 1027, 1030, 1033, 1036, 1039, 1042, 1045, 1048, 1051, 1054, 1057, 1060, 1063, 1066, 1069, 1072, 1075, 1078, 1081, 1084, 1087, 1090, 1093, 1096, 1099, 1102, 1105, 1108, 1111, 1114, 1117, 1120, 1123, 1126, 1129, 1132, 1135, 1138, 1141, 1144, 1147, 1150, 1153, 1156, 1159, 1162, 1165, 1168, 1171, 1174, 1177, 1180, 1183, 1186, 1189, 1192, 1195, 1198, 1201, 1204, 1207, 1210, 1213, 1216, 1219, 1222, 1225, 1228, 1231, 1234, 1237, 1240, 1243, 1246, 1249, 1252, 1255, 1258, 1261, 1264, 1267, 1270, 1273, 1276, 1279, 1282, 1285, 1288, 1291, 1294, 1297, 1300, 1303, 1306, 1309, 1312, 1315, 1318, 1321, 1324, 1327, 1330, 1333, 1336, 1339, 1342, 1345, 1348, 1351, 1354, 1357, 1360, 1363, 1366, 1369, 1372, 1375, 1378, 1381, 1384, 1387, 1390, 1393, 1396, 1399, 1402, 1405, 1408, 1411, 1414, 1417, 1420, 1423, 1426, 1429, 1432, 1435, 1438, 1441, 1444, 1447, 1450, 1453, 1456, 1459, 1462, 1465, 1468, 1471, 1474, 1477, 1480, 1483, 1486, 1489, 1492, 1495, 1498, 1501, 1504, 1507, 1510, 1513, 1516, 1519, 1522, 1525, 1528, 1531, 1534, 1537, 1540, 1543, 1546, 1549, 1552, 1555, 1558, 1561, 1564, 1567, 1570, 1573, 1576, 1579, 1582, 1585, 1588, 1591, 1594, 1597, 1600, 1603, 1606, 1609, 1612, 1615, 1618, 1621, 1624, 1627, 1630, 1633, 1636, 1639, 1642, 1645, 1648, 1651, 1654, 1657, 1660, 1663, 1666, 1669, 1672, 1675, 1678, 1681, 1684, 1687, 1690, 1693, 1696, 1699, 1702, 1705, 1708, 1711, 1714, 1717, 1720, 1723, 1726, 1729, 1732, 1735, 1738, 1741, 1744, 1747, 1750, 1753, 1756, 1759, 1762, 1765, 1768, 1771, 1774, 1777, 1780, 1783, 1786, 1789, 1792, 1795, 1798, 1801, 1804, 1807, 1810, 1813, 1816, 1819, 1822, 1825, 1828, 1831, 1834, 1837, 1840, 1843, 1846, 1849, 1852, 1855, 1858, 1861, 1864, 1867, 1870, 1873, 1876, 1879, 1882, 1885, 1888, 1891, 1894, 1897, 1900, 1903, 1906, 1909, 1912, 1915, 1918, 1921, 1924, 1927, 1930, 1933, 1936, 1939, 1942, 1945, 1948, 1951, 1954, 1957, 1960, 1963, 1966, 1969, 1972, 1975, 1978, 1981, 1984, 1987, 1990, 1993, 1996, 1999, 2002, 2005, 2008, 2011, 2014, 2017, 2020, 2023, 2026, 2029, 2032, 2035, 2038, 2041, 2044, 2047, 2050, 2053, 2056, 2059, 2062, 2065, 2068, 2071, 2074, 2077, 2080, 2083, 2086, 2089, 2092, 2095, 2098, 2101, 2104, 2107, 2110, 2113, 2116, 2119, 2122, 2125, 2128, 2131, 2134, 2137, 2140, 2143, 2146, 2149, 2152, 2155, 2158, 2161, 2164, 2167, 2170, 2173, 2176, 2179, 2182, 2185, 2188, 2191, 2194, 2197, 2200, 2203, 2206, 2209, 2212, 2215, 2218, 2221, 2224, 2227, 2230, 2233, 2236, 2239, 2242, 2245, 2248, 2251, 2254, 2257, 2260, 2263, 2266, 2269, 2272, 2275, 2278, 2281, 2284, 2287, 2290, 2293, 2296, 2299, 2302, 2305, 2308, 2311, 2314, 2317, 2320, 2323, 2326, 2329, 2332, 2335, 2338, 2341, 2344, 2347, 2350, 2353, 2356, 2359, 2362, 2365, 2368, 2371, 2374, 2377, 2380, 2383, 2386, 2389, 2392, 2395, 2398, 2401, 2404, 2407, 2410, 2413, 2416, 2419, 2422, 2425, 2428, 2431, 2434, 2437, 2440, 2443, 2446, 2449, 2452, 2455, 2458, 2461, 2464, 2467, 2470, 2473, 2476, 2479, 2482, 2485, 2488, 2491, 2494, 2497, 2500, 2503, 2506, 2509, 2512, 2515, 2518, 2521, 2524, 2527, 2530, 2533, 2536, 2539, 2542, 2545, 2548, 2551, 2554, 2557, 2560, 2563, 2566, 2569, 2572, 2575, 2578, 2581, 2584, 2587, 2590, 2593, 2596, 2599, 2602, 2605, 2608, 2611, 2614, 2617, 2620, 2623, 2626, 2629, 2632, 2635, 2638, 2641, 2644, 2647, 2650, 2653, 2656, 2659, 2662, 2665, 2668, 2671, 2674, 2677, 2680, 2683, 2686, 2689, 2692, 2695, 2698, 2701, 2704, 2707, 2710, 2713, 2716, 2719, 2722, 2725, 2728, 2731, 2734, 2737, 2740, 2743, 2746, 2749, 2752, 2755, 2758, 2761, 2764, 2767, 2770, 2773, 2776, 2779, 2782, 2785, 2788, 2791, 2794, 2797, 2800, 2803, 2806, 2809, 2812, 2815, 2818, 2821, 2824, 2827, 2830, 2833, 2836, 2839, 2842, 2845, 2848, 2851, 2854, 2857, 2860, 2863, 2866, 2869, 2872, 2875, 2878, 2881, 2884, 2887, 2890, 2893, 2896, 2899, 2902, 2905, 2908, 2911, 2914, 2917, 2920, 2923, 2926, 2929, 2932, 2935, 2938, 2941, 2944, 2947, 2950, 2953, 2956, 2959, 2962, 2965, 2968, 2971, 2974, 2977, 2980, 2983, 2986, 2989, 2992, 2995, 2998, 3001, 3004, 3007, 3010, 3013, 3016, 3019, 3022, 3025, 3028, 3031, 3034, 3037, 3040, 3043, 3046, 3049, 3052, 3055, 3058, 3061, 3064, 3067, 3070, 3073, 3076, 3079, 3082, 3085, 3088, 3091, 3094, 3097, 3100, 3103, 3106, 3109, 3112, 3115, 3118, 3121, 3124, 3127, 3130, 3133, 3136, 3139, 3142, 3145, 3148, 3151, 3154, 3157, 3160, 3163, 3166, 3169, 3172, 3175, 3178, 3181, 3184, 3187, 3190, 3193, 3196, 3199, 3202, 3205, 3208, 3211, 3214, 3217, 3220, 3223, 3226, 3229, 3232, 3235, 3238, 3241, 3244, 3247, 3250, 3253, 3256, 3259, 3262, 3265, 3268, 3271, 3274, 3277, 3280, 3283, 3286, 3289, 3292, 3295, 3298, 3301, 3304, 3307, 3310, 3313, 3316, 3319, 3322, 3325, 3328, 3331, 3334, 3337, 3340, 3343, 3346, 3349, 3352, 3355, 3358, 3361, 3364, 3367, 3370, 3373, 3376, 3379, 3382, 3385, 3388, 3391, 3394, 3397, 3400, 3403, 3406, 3409, 3412, 3415, 3418, 3421, 3424, 3427, 3430, 3433, 3436, 3439, 3442, 3445, 3448, 3451, 3454, 3457, 3460, 3463, 3466, 3469, 3472, 3475, 3478, 3481, 3484, 3487, 3490, 3493, 3496, 3499, 3502, 3505, 3508, 3511, 3514, 3517, 3520, 3523, 3526, 3529, 3532, 3535, 3538, 3541, 3544, 3547, 3550, 3553, 3556, 3559, 3562, 3565, 3568, 3571, 3574, 3577, 3580, 3583, 3586, 3589, 3592, 3595, 3598, 3601, 3604, 3607, 3610, 3613, 3616, 3619, 3622, 3625, 3628, 3631, 3634, 3637, 3640, 3643, 3646, 3649, 3652, 3655, 3658, 3661, 3664, 3667, 3670, 3673, 3676, 3679, 3682, 3685, 3688, 3691, 3694, 3697, 3700, 3703, 3706, 3709, 3712, 3715, 3718, 3721, 3724, 3727, 3730, 3733, 3736, 3739, 3742, 3745, 3748, 3751, 3754, 3757, 3760, 3763, 3766, 3769, 3772, 3775, 3778, 3781, 3784, 3787, 3790, 3793, 3796, 3799, 3802, 3805, 3808, 3811, 3814, 3817, 3820, 3823, 3826, 3829, 3832, 3835, 3838, 3841, 3844, 3847, 3850, 3853, 3856, 3859, 3862, 3865, 3868, 3871, 3874, 3877, 3880, 3883, 3886, 3889, 3892, 3895, 3898, 3901, 3904, 3907, 3910, 3913, 3916, 3919, 3922, 3925, 3928, 3931, 3934, 3937, 3940, 3943, 3946, 3949, 3952, 3955, 3958, 3961, 3964, 3967, 3970, 3973, 3976, 3979, 3982, 3985, 3988, 3991, 3994, 3997, 4000, 4003, 4006, 4009, 4012, 4015, 4018, 4021, 4024, 4027, 4030, 4033, 4036, 4039, 4042, 4045, 4048, 4051, 4054, 4057, 4060, 4063, 4066, 4069, 4072, 4075, 4078, 4081, 4084, 4087, 4090, 4093, 4096, 4099, 4102, 4105, 4108, 4111, 4114, 4117, 4120, 4123, 4126, 4129, 4132, 4135, 4138, 4141, 4144, 4147, 4150, 4153, 4156, 4159, 4162, 4165, 4168, 4171, 4174, 4177, 4180, 4183, 4186, 4189, 4192, 4195, 4198, 4201, 4204, 4207, 4210, 4213, 4216, 4219, 4222, 4225, 4228, 4231, 4234, 4237, 4240, 4243, 4246, 4249, 4252, 4255, 4258, 4261, 4264, 4267, 4270, 4273, 4276, 4279, 4282, 4285, 4288, 4291, 4294, 4297, 4300, 4303, 4306, 4309, 4312, 4315, 4318, 4321, 4324, 4327, 4330, 4333, 4336, 4339, 4342, 4345, 4348, 4351, 4354, 4357, 4360, 4363, 4366, 4369, 4372, 4375, 4378, 4381, 4384, 4387, 4390, 4393, 4396, 4399, 4402, 4405, 4408, 4411, 4414, 4417, 4420, 4423, 4426, 4429, 4432, 4435, 4438, 4441, 4444, 4447, 4450, 4453, 4456, 4459, 4462, 4465, 4468, 4471, 4474, 4477, 4480, 4483, 4486, 4489, 4492, 4495, 4498, 4501, 4504, 4507, 4510, 4513, 4516, 4519, 4522, 4525, 4528, 4531, 4534, 4537, 4540, 4543, 4546, 4549, 4552, 4555, 4558, 4561, 4564, 4567, 4570, 4573, 4576, 4579, 4582, 4585, 4588, 4591, 4594, 4597, 4600, 4603, 4606, 4609, 4612, 4615, 4618, 4621, 4624, 4627, 4630, 4633, 4636, 4639, 4642, 4645, 4648, 4651, 4654, 4657, 4660, 4663, 4666, 4669, 4672, 4675, 4678, 4681, 4684, 4687, 4690, 4693, 4696, 4699, 4702, 4705, 4708, 4711, 4714, 4717, 4720, 4723, 4726, 4729, 4732, 4735, 4738, 4741, 4744, 4747, 4750, 4753, 4756, 4759, 4762, 4765, 4768, 4771, 4774, 4777, 4780, 4783, 4786, 4789, 4792, 4795, 4798, 4801, 4804, 4807, 4810, 4813, 4816, 4819, 4822, 4825, 4828, 4831, 4834, 4837, 4840, 4843, 4846, 4849, 4852, 4855, 4858, 4861, 4864, 4867, 4870, 4873, 4876, 4879, 4882, 4885, 4888, 4891, 4894, 4897, 4900, 4903, 4906, 4909, 4912, 4915, 4918, 4921, 4924, 4927, 4930, 4933, 4936, 4939, 4942, 4945, 4948, 4951, 4954, 4957, 4960, 4963, 4966, 4969, 4972, 4975, 4978, 4981, 4984, 4987, 4990, 4993, 4996, 4999, 5002, 5005, 5008, 5011, 5014, 5017, 5020, 5023, 5026, 5029, 5032, 5035, 5038, 5041, 5044, 5047, 5050, 5053, 5056, 5059, 5062, 5065, 5068, 5071, 5074, 5077, 5080, 5083, 5086, 5089, 5092, 5095, 5098, 5101, 5104, 5107, 5110, 5113, 5116, 5119, 5122, 5125, 5128, 5131, 5134, 5137, 5140, 5143, 5146, 5149, 5152, 5155, 5158, 5161, 5164, 5167, 5170, 5173, 5176, 5179, 5182, 5185, 5188, 5191, 5194, 5197, 5200, 5203, 5206, 5209, 5212, 5215, 5218, 5221, 5224, 5227, 5230, 5233, 5236, 5239, 5242, 5245, 5248, 5251, 5254, 5257, 5260, 5263, 5266, 5269, 5272, 5275, 5278, 5281, 5284, 5287, 5290, 5293, 5296, 5299, 5302, 5305, 5308, 5311, 5314, 5317, 5320, 5323, 5326, 5329, 5332, 5335, 5338, 5341, 5344, 5347, 5350, 5353, 5356, 5359, 5362, 5365, 5368, 5371, 5374, 5377, 5380, 5383, 5386, 5389, 5392, 5395, 5398, 5401, 5404, 5407, 5410, 5413, 5416, 5419, 5422, 5425, 5428, 5431, 5434, 5437, 5440, 5443, 5446, 5449, 5452, 5455, 5458, 5461, 5464, 5467, 5470, 5473, 5476, 5479, 5482, 5485, 5488, 5491, 5494, 5497, 5500, 5503, 5506, 5509, 5512, 5515, 5518, 5521, 5524, 5527, 5530, 5533, 5536, 5539, 5542, 5545, 5548, 5551, 5554, 5557, 5560, 5563, 5566, 5569, 5572, 5575, 5578, 5581, 5584, 5587, 5590, 5593, 5596, 5599, 5602, 5605, 5608, 5611, 5614, 5617, 5620, 5623, 5626, 5629, 5632, 5635, 5638, 5641, 5644, 5647, 5650, 5653, 5656, 5659, 5662, 5665, 5668, 5671, 5674, 5677, 5680, 5683, 5686, 5689, 5692, 5695, 5698, 5701, 5704, 5707, 5710, 5713, 5716, 5719, 5722, 5725, 5728, 5731, 5734, 5737, 5740, 5743, 5746, 5749, 5752, 5755, 5758, 5761, 5764, 5767, 5770, 5773, 5776, 5779, 5782, 5785, 5788, 5791, 5794, 5797, 5800, 5803, 5806, 5809, 5812, 5815, 5818, 5821, 5824, 5827, 5830, 5833, 5836, 5839, 5842, 5845, 5848, 5851, 5854, 5857, 5860, 5863, 5866, 5869, 5872, 5875, 5878, 5881, 5884, 5887, 5890, 5893, 5896, 5899, 5902, 5905, 5908, 5911, 5914, 5917, 5920, 5923, 5926, 5929, 5932, 5935, 5938, 5941, 5944, 5947, 5950, 5953, 5956, 5959, 5962, 5965, 5968, 5971, 5974, 5977, 5980, 5983, 5986, 5989, 5992, 5995, 5998, 6001, 6004, 6007, 6010, 6013, 6016, 6019, 6022, 6025, 6028, 6031, 6034, 6037, 6040, 6043, 6046, 6049, 6052, 6055, 6058, 6061, 6064, 6067, 6070, 6073, 6076, 6079, 6082, 6085, 6088, 6091, 6094, 6097, 6100, 6103, 6106, 6109, 6112, 6115, 6118, 6121, 6124, 6127, 6130, 6133, 6136, 6139, 6142, 6145, 6148, 6151, 6154, 6157, 6160, 6163, 6166, 6169, 6172, 6175, 6178, 6181, 6184, 6187, 6190, 6193, 6196, 6199, 6202, 6205, 6208, 6211, 6214, 6217, 6220, 6223, 6226, 6229, 6232, 6235, 6238, 6241, 6244, 6247, 6250, 6253, 6256, 6259, 6262, 6265, 6268, 6271, 6274, 6277, 6280, 6283, 6286, 6289, 6292, 6295, 6298, 6301, 6304, 6307, 6310, 6313, 6316, 6319, 6322, 6325, 6328, 6331, 6334, 6337, 6340, 6343, 6346, 6349, 6352, 6355, 6358, 6361, 6364, 6367, 6370, 6373, 6376, 6379, 6382, 6385, 6388, 6391, 6394, 6397, 6400, 6403, 6406, 6409, 6412, 6415, 6418, 6421, 6424, 6427, 6430, 6433, 6436, 6439, 6442, 6445, 6448, 6451, 6454, 6457, 6460, 6463, 6466, 6469, 6472, 6475, 6478, 6481, 6484, 6487, 6490, 6493, 6496, 6499, 6502, 6505, 6508, 6511, 6514, 6517, 6520, 6523, 6526, 6529, 6532, 6535, 6538, 6541, 6544, 6547, 6550, 6553, 6556, 6559, 6562, 6565, 6568, 6571, 6574, 6577, 6580, 6583, 6586, 6589, 6592, 6595, 6598, 6601, 6604, 6607, 6610, 6613, 66

APPENDIX C

INVENTORY METHODS¹

As has been stated (page 60) the chief criticism of the Commission related to its disapproval of the company's treatment of inventories.

In closing up its books for the years 1917, 1918, 1919, and 1920 for the purpose of computing profits the company omitted from its inventories a large quantity of machines and other physical units, and valued the property included in its inventory on an arbitrary basis, below cost or market, and in this way understated its earnings, as follows:

1917.....	\$6, 407, 127
1918.....	5, 321, 388
1919.....	3, 799, 503
1920.....	3, 198, 041
Total, 4 years.....	18, 726, 059

Allocating these reductions by virtue of reduced inventories between domestic and foreign business in the same manner that the company has allocated

¹ Inventories are important factors in computing the profits of a company. At the end of the year, or other period of time, for which it is desired to compute profits an inventory is taken of all goods, wares, merchandise, or other stocks on hand, finished and unfinished, and sales or other operating account credited with the value thereof.

It is therefore observed that the larger the inventories the larger the sales, and the larger the sales the larger the profits.

These same inventory values are charged at the beginning of the next year to merchandise or other operating account of the company. It is therefore apparent that any deflation in the inventories at the end of any year will necessarily be reflected by an inflation of the profits in the succeeding year by way of a reduction in the cost of goods sold.

capital, and dividing the amounts by the domestic capital, the following additional earning rate by virtue thereof is hereby shown:

	Per cent
1917.....	3.6
1918.....	2.8
1919.....	1.9

Adding these percentages to the earnings on domestic business heretofore shown, the following rate of return on domestic capital invested in the manufacturing business before and after deducting Federal taxes is shown, as follows:

Year	Before deducting Federal taxes (per cent)	After deducting Federal taxes (per cent)
1917.....	24.91	21.67
1918.....	26.77	23.79
1919.....	21.77	17.84

This treatment of its inventories the company has termed a basic inventory value basis peculiar to a few companies, and differing from the cost or market (whichever is lower) method adopted by the Government—the idea of which is to take any loss known when the inventory is made up.

It is unwise and bad policy to carry forward any stock which, when sold, will not yield a normal gross margin sufficient to cover expenses and in addition realize a normal return on the investment.

In discussing inventories it must be borne in mind that merchandise or sales account is charged at the beginning of the next year with the same inventory and at the same price that merchandise or sales account is credited with at the close of the preceding year.

It is therefore apparent that any arbitrary reduction in inventory values at the end of any year, thereby decreasing the profits for that year, will correspondingly increase the profits for the year immediately following, unless the same arbitrary practice is observed in fixing the inventory values at the end of the following year.

Should a company experience an unusually and abnormally prosperous period and desire to withhold the information as to its actual earnings from the Government authorities in the consideration of what might be termed a fair return upon its invested capital, or in determining its taxes throughout the war or other highly taxable period, there is no more certain or effective plan through which it could be done than by manipulation of its inventories, omitting therefrom a large number of finished products and valuing the products it does include in its inventories at arbitrary values, far below cost or market (whichever is lowest), instead of following the usual and well-defined rules of accountancy and business practice.

By the use of the so-called "basic inventory value basis," the International Harvester Company has understated its net earnings for 1917-1920 to the amount of \$18,726,059, as heretofore shown.

In 1921 the company shows a profit of \$4,149,918, when, as a matter of fact, it lost \$14,576,141.

With a view to more fully showing the effects of the application of this system as compared to the regular cost or market system, the following statement of earnings for 1917-1921 (Exhibit D (s) 21) is submitted:

Year	Earnings based on cost or market inventories	Earnings per published reports based on basic inventory method	Difference column 2 compared with column 1 (+ or -)
	(1)	(2)	(3)
1917.....	\$20,416,710	\$14,000,583	-\$6,407,127
1918.....	20,306,712	14,985,825	-5,321,887
1919.....	16,408,239	12,608,726	-3,799,513
1920.....	19,853,364	16,656,353	-3,196,941
1921 (loss).....	-14,576,141	4,149,918	+18,726,059

Column 1, 1917-1920, shows the profits with complete inventories computed on the cost or market basis, whichever is lowest, in accordance with established custom and usage.

Column 2, 1917-1920, shows the profits with only a portion of its actual inventories included, computed on an arbitrary basis, below cost or market, to the extent of the difference between the two amounts shown as earnings for each of these years.

The profits in 1921 reflect the transition back to the cost or market basis (whichever is lowest) and the difference between column 3 and column 2 in 1921 is the same as the total of the difference for 1917-1920, inclusive.

Mr. Wm. M. Reay, Comptroller of the Company, after stating that "the basic inventory plan consisted in carrying a minimum quantity of inventory throughout this period of rapidly inflating and deflating markets on a normal basis of cost" (R. 226), was asked again as to the inventory (R. 227), and replied that "it was a normal quantity of inventory which the company must constantly carry over from year to year in order to conduct its business as a going concern."

If the company had for its only purpose the conservation of some well-known economic policy in

establishing what it terms as a basic inventory value basis, and that purpose was to observe certain limitations as to quantity of finished stocks on hand, it could have easily limited its production to have met the requirements, instead of omitting large quantities of machines from its inventories.

A careful inspection of the earnings herein reported under each system fails to disclose any economic or other reason why the usual course should not have been followed. What economic reason is there in reporting an earning of 14 million dollars in 1917 when as a matter of fact the company has earned 20 millions? What economic reason is there in reporting a loss of 4 million in 1920, when as a matter of fact the loss was 14 millions?

For the purpose of obtaining the exact basis upon which these inventories were arbitrarily fixed Mr. Reay was asked a hypothetical question (R. 244) as follows:

Suppose the actual inventory of 1916 contained 20 machines costing \$100; the inventory for 1917 contained 25 machines costing \$150; and the inventory for 1918 forty machines costing \$300, assuming that the cost price was lower than the market, what number of machines would be included in the 1918 inventory on the basis inventory value basis, and at what price or prices?

His answer was (R. 244):

The basic inventory for 1918 would contain 25 machines at a valuation of \$100 each.

It is therefore observed that the number of machines or other inventory items for 1917 was used as a basis for all years, 1917-1920, inclusive, regardless of the number actually on hand, while the cost or market value (whichever was the lowest) of the machines or other inventory item for 1916 was used in determining inventory values for all years, 1917-1920, inclusive.

The company acquired its timberlands and iron-ore leaseholds long before there was any inflation in the markets relating to the raw materials which enter into the manufacture of harvesting machines.

It knew in advance what the cost would be, and unless it had charged the raw material costs in its inter-company transactions at abnormal and unreasonable profits there was not the slightest danger of experiencing any actual or fancied loss in its inventory valuations.

This is specifically true where the cost or market basis was employed, for the reason that any deflation in any physical unit below cost is automatically taken care of by substituting the market price for the cost price and crediting inventory account with the deteriorated value instead of with the cost value.

The most serious objection to the cost or market system of valuing inventories is that it is too elastic and gives the manufacturer too much latitude in fixing the market values on his own property; and unless the reports are accompanied by detail schedules showing items and physical units upon which differences between cost and market valuation exists, its use is dangerous to the best interests of the Government.

The fairest and most equitable manner to value inventories is upon the *cost* basis, where the *valuations* can be checked back by the books in detail. In this way the Government would not be forced to accept market valuations determined alone by the company.

If abnormal conditions should arise, the emergency could be taken care of by setting up a reserve as a precaution against any decrease in inventory values below cost, as recommended by Mr. Bennett. (Reay, IV, Rec. 238-239.)

Such a reserve is not cumulative as in case of reserves for depreciation of fixed assets.

It applies only to that specific inventory and must be dropped when new inventory is taken.

If the company has actually experienced any losses in inventory values below cost during the year, charge them against the earning for that year and close out the reserve. In this way the losses are taken care of as they are incurred.

The inventory reserve, if set up, should appear in a separate item on the balance sheets, so as to be readily recognized as an appropriation of surplus, as a conservative provision for losses which may possibly occur, instead of as a deduction from an asset on account of losses which have already occurred.

The cost or market basis (whichever is lowest), which has been adopted by the Commission furnishes ample facilities for meeting all conditions, whether the company owns its own raw-material supply or not, and there are no actual reductions in inventory values that can not be taken care of by its application.

APPENDIX D

FUNDS SET ASIDE FOR FOREIGN BUSINESS

Where a company has invested a portion of its capital, either in the conduct of foreign business or in foreign investments, it should be regarded as a separate investment and in no way connected with the capital employed in domestic business upon which a fair return may be expected, and any foreign losses incurred should be regarded as a charge against earnings from foreign business only, or existing surplus accretions, if any, or to the capital set aside for the conduct of foreign business, and should not be a charge against the current earnings on United States business.

If the stockholders of a company wish to engage in foreign commerce and make the necessary investments incident to the proper conduct of a foreign business, they have a perfect right to lay aside a portion of the capital for that purpose, however hazardous it may appear, but if they do engage in the conduct of a foreign business and lose, the loss must be taken care of out of the capital employed for the conduct of the foreign business and not added to the cost of domestic business.

In order that the earnings might be reviewed in accordance with this well-established practice, the company was requested to furnish a statement allocating the total business so as to show the business transacted in the United States separately from the business transacted in foreign countries.

The allocations as to invested capital, 1913-1922, inclusive, are found in Exhibit P (S) 139 (R. 567), and are made on the following basis:

The investment in steel business and other raw material properties shows these properties at their actual book value plus the sum of \$5,000,000, representing the minimum working capital. The balance of the net investment of the company has been divided between the domestic and foreign business as follows: The investment in the foreign business represents all investments in foreign countries (plants, inventories, receivables, and cash) plus that portion of the value of domestic plants and inventories which the value of the foreign shipments from said plants bears to the total shipments. After deducting the foreign investment computed in this manner, the balance of the capital and surplus has been taken as the investment in the domestic business.

The basis of these computations was agreed upon between the Government and officers and counsel of the Harvester Company, as actual figures were not available, and it is assumed that they are practically in accordance with that agreement.

It appears from the printed report of the company for 1918, p. 4, that the company entertained this same view as to treatment of foreign losses in its annual statement and deducted them from the capital set aside for the conduct of foreign business, in stating its *current assets* as follows:

Funds withheld in Europe by war conditions

At nominal exchange rates	\$45,432,972.18
Less war losses charged off	20,598,000.00
	<hr/> 24,834,972.18

The money set aside by the International Harvester Company for the capitalization of foreign companies, as shown in the direct examination of Mr. William M. Reay (R. 367), is as follows:

The International Harvester Co. in Russia (organized in the State of Maine).....	Capital \$31,500,000
International Harvester Co. of Canada	15,000,000
International Harvester Co. of Australia (£600,000)	2,880,000
International Harvester Co. of Belgique, S. A. (250,000 francs).....	25,000
Denmark Co. (500,000 crowns).....	131,579
French Manufacturing Co. (30,000,000 francs).....	3,164,181
French Selling Co. (2,500,000 francs).....	480,769
German Selling Co. (1,000,000 francs).....	238,095
German Manufacturing Co. (6,000,000 marks).....	1,428,571
British Co. (£50,000).....	240,000
New Zealand Co. (£150,000).....	720,000
Norwegian Co. (1,000,000 crowns).....	263,158
Swedish Co. (3,000,000 crowns).....	789,473
Swiss Co. (150,000 francs).....	28,846
Total.....	56,889,672

APPENDIX E

DEPRECIATION CHARGE AGAINST IRON-ORE LEASE-HOLDS

In addition to the regular charge for depreciation on development cost, the annual reports show that the company has charged against the net earnings for each year a large amount for ore and timber extinguishment.

The company owns its timberlands, but does not own its iron-ore lands. The iron-ore properties are operated under lease, and whatever benefits may accrue from the reduction in values to the property by virtue of extracting the ore from the ground should inure to the owner of the property and not to the lessee.

In addition to the depletion and depreciation charges above indicated, royalties are charged and treated as an expense.

The charges for depletion for iron-ore and timber extinguishment are not separated, which of itself is significant, since timber extinguishment is a proper charge against the current earnings of the Company, but the iron-ore extinguishment is not.

The lumber produced (1,000 feet), as shown in Exhibit P (S) 69 (R. 480), and the iron ore produced (tons), as shown in Exhibit P (S) 68 (R. 479), and the charges against current earnings, as shown by the annual reports of the Company for iron-ore and timber extinguishment for 1916, 1918, 1920, and 1921, are as follows:

Year	Timber produced (1,000 feet)	Iron ore produced (tons)	Depletion for iron ore and timber charged off
1916	15,500	790,787	\$642,377
1918	16,490	710,337	447,632
1920	17,027	732,227	429,386
1922	18,915	370,339	330,022

Assuming that the depletion for timber is correctly stated at \$5.00 per thousand feet, the remaining depletion chargeable to iron ore would be as follows:

Year	Timber		Iron ore		
	Produced (1,000 feet)	Depletion at \$5 per M feet	Produced (tons)	Depletion (assumed)	Depletion (rate per ton actual)
	(1)	(2)	(3)	(4)	(5)
1916	15,500	\$77,500	790,787	\$364,887	46
1918	16,490	82,450	710,337	355,152	49
1920	17,027	85,135	732,227	343,743	47
1922	18,915	94,575	370,339	255,447	71

An examination of the printed reports and record, pages 366, 367, and 368, showing leaseholds of iron ore lands discloses the fact that the iron ore for the years indicated was practically all mined from the leaseholds of the Hawkins and Agnew mines, which were obtained from the Deering Company in 1902.

The royalty required to be paid on iron ore obtained from the Hawkins mine was $21\frac{1}{2}\epsilon$ per ton of crude ore (Rec. p. 361-362) and on the Agnew mine 25ϵ per ton of crude ore. It will be observed from column 5 that the rates of depletion really charged are far in excess of the lease requirements for royalties.

On record, page 367, Mr. Reay states that the depletion rate charged as an expense on Hawkins mine since 1912 has been 30ϵ per ton, and the depletion rate against the Agnew mine since 1912 has been $37\frac{1}{2}\epsilon$ per ton, and that the Agnew mine has not been in operation since 1919.

None of the depletion charged against the income of the International Harvester Company for iron ore extinguishment shown above in column 4 is a proper charge against its income, in considering what might be a fair return on invested capital, for the reason that the Company does not own the property, but simply operates the mines on a royalty basis, under a lease.

The annual reports of the Company showing net earnings are, therefore, understated for those years to that extent.

It is also assumed that this same practice has obtained for the intervening years 1917, 1919, and 1921.

APPENDIX F

CAPITAL AND SURPLUS

Statement showing capital stock and surplus of the International Harvester Co., the International Harvester Company of New Jersey, and the International Harvester Corporation, on October 1, 1902, and at the beginning of each calendar year, 1903 to 1925, inclusive, as compiled by the Government from Exhibits P(S) 140, D(S) 81, record pp. 2347, 1673, and published reports of the company.

Beginning of calendar year	Preferred stock (dollars)	Common stock (dollars)	Total capital stock (dollars)	Surplus (dollars)	Total capital and surplus (dollars)
	(1)	(2)	(3)	(4)	(5)
1902		120,000,000	120,000,000		120,000,000
1903		120,000,000	120,000,000		120,000,000
1904		120,000,000	120,000,000	2,041,191	122,041,191
1905		120,000,000	120,000,000	2,999,715	122,999,715
1906		120,000,000	120,000,000	2,278,900	122,278,900
1907		120,000,000	120,000,000	8,125,830	128,125,830
1908	60,000,000	60,000,000	120,000,000	12,000,000	132,000,000
1909	60,000,000	60,000,000	120,000,000	15,000,000	135,000,000
1910	70,000,000	60,000,000	130,000,000	27,384,730	157,384,730
1911	60,000,000	60,000,000	120,000,000	35,000,560	155,000,560
1912	60,000,000	60,000,000	120,000,000	25,590,967	145,590,967
1913	60,000,000	60,000,000	120,000,000	25,580,544	145,580,544
1914	60,000,000	60,000,000	120,000,000	28,457,322	148,457,322
1915	60,000,000	60,000,000	120,000,000	42,985,140	162,985,140
1916	60,000,000	60,000,000	120,000,000	47,476,384	167,476,384
1917	60,000,000	60,000,000	120,000,000	54,041,744	174,041,744
1918	60,000,000	60,000,000	120,000,000	62,101,527	182,101,527
1919	60,000,000	60,000,000	120,000,000	68,046,062	188,046,062
1920	60,000,000	60,000,000	120,000,000	75,645,390	195,645,390
1921	60,000,000	60,000,000	120,000,000	69,200,741	189,200,741
1922	60,000,000	60,000,000	120,000,000	76,020,780	196,020,780
1923	60,000,000	60,000,000	120,000,000	82,301,072	202,301,072

Surplus accounts for 1, 1902.

Note.—On January 1, 1907, the capital stock was changed by issuing one-half of the outstanding stock 7 per cent cumulative preferred stock which is limited to 7 per cent per annum and leaving the other half common stock (see report Dec. 31, 1905, and also record, p. 178).

In 1915, \$222,979 of preferred stock and \$472,706 of common stock were issued to employees under other compensation and stock ownership plan.

The increased capital stock of 10 millions in 1913, 12 millions in 1918, \$2,041,191 in 1920, and \$1,000,000 in 1923 resulted from stock dividends.

From January, 1913, to September 30, 1918, the preferred and common stock were both equally divided between the International Harvester Company of New Jersey and the International Harvester Corporation.

DIVIDENDS PAID

Statement showing amount of dividends paid by the International Harvester Co., International Harvester Corporation, and International Harvester Company of New Jersey, 1903-1922, as compiled by the Government from the published reports of the companies, and Exhibit P(s) 140

Cash dividends

Year	Dividends on preferred stock		Dividends on common stock		Total
	Rate (per cent)	Amount	Rate (per cent)	Amount	Amount
1903			5	\$3,000,000	\$3,000,000
1904			4	4,800,000	4,800,000
1905			4	4,800,000	4,800,000
1906			4	4,800,000	4,800,000
1907	7	\$4,200,000			4,200,000
1908	7	4,200,000			4,200,000
1909	7	4,200,000			4,200,000
1910	7	4,200,000	4	3,200,000	7,400,000
1911	7	4,200,000	5	4,000,000	8,200,000
1912	7	4,200,000	5	4,000,000	8,200,000
1913	7	4,200,000	5	4,000,000	8,200,000
1914	7	4,200,000	5-25	5,000,000	9,200,000
1915	7	4,200,000	5-40	2,000,000	6,200,000
1916	7	4,200,000	5-40	2,000,000	6,200,000
1917	7	4,200,000	7-40	2,000,000	6,200,000
1918	7	4,200,000	6-25 $\frac{1}{2}$	3,800,000	8,000,000
1919	7	4,200,000	6	4,800,000	9,000,000
1920	7	4,200,000	7	5,750,000	9,950,000
1921	7	4,215,673	5	5,112,786	9,328,459
1922	7	4,215,673	5	4,847,920	9,063,593
Total cash dividends		67,281,546		67,550,706	134,832,252

In 1914 the International Harvester Corporation paid only 2 $\frac{1}{2}$ % cash dividend on its common stock and in 1915, 1916, 1917, and 1918 paid no cash dividends on its common stock. In 1918, 6 per cent dividend was paid on the common stock of the I. H. Co. and 3 $\frac{1}{2}$ % paid on the common stock of the I. H. C. of New Jersey.

Stock dividends paid

The stock dividends paid were on common stock as follows:

1910, 33 $\frac{1}{4}$ per cent.....		\$20,000,000
1920, September 15, 12 $\frac{1}{2}$ per cent.....		10,000,000
1921, January 25, 2 per cent.....	\$1,800,000	
July 25, 2 per cent.....	1,845,414	
		3,645,414
1922, January 25, 2 per cent.....	1,882,322	
July 25, 2 per cent.....	1,919,968	
		3,802,290
Total stock dividends.....		37,447,704
Total cash dividends paid.....		134,542,052
Grand total dividends paid.....		171,989,756

Contrast with this record of extraordinary growth Deft. Ex. (s) 30 some 150 implement concerns that have gone out of business between 1912 and 1923. (Odell, IV R. 2076.)

APPENDIX G

MANUFACTURERS' COST OF GRAIN BINDERS

Statement showing manufacturing estimated cost per implement for grain binders, 1916 and 1918, as revised by the Commission and shown by report of Federal Trade Commission, 1920, p. 172, Table No. 68 (see Exhibit P(S) 34), R. 463

Manufacturer	Type of implement	Material cost			Productive labor			Overhead, warehouse, and shipping		
		1916	1918	Per cent increase	1916	1918	Per cent increase	1916	1918	Per cent increase
	1	2	3	4	5	6	7	8	9	10
International	6-foot	\$35.10	\$47.32	34.76	\$16.70	\$13.13	22.71	\$6.87	\$16.71	46.30
Isere & Co.	do.	47.47	83.71	76.56	8.67	11.52	33.44	12.70	18.90	49.53
Ward	do.	54.47	101.42	85.21	9.47	12.63	36.61	25.32	31.04	22.59
Moline Plow	7-foot	53.74	85.42	59.37	16.38	13.42	16.62	18.78	24.46	30.36
Murray Plow	do.	51.52	79.46	54.26	12.30	13.83	26.73	19.45	24.91	25.49
Arno	6-foot	56.41	117.57	56.57	8.77	10.71	22.42	16.19	28.87	47.44
Average				60.16			24.80			36.31

Statements showing manufacturing estimated cost per implement for grain binders, 1916 and 1918, as revised by the Commission and shown by report of Federal Trade Commission, 1920, p. 174, Table No. 618 (Key Exhibit P. N. 91) R. 495—Continued

Manufacturers	Size of single implement	Total manufacturing cost		Selling general and administrative		Cost of implements sold	
		1916	1918	Per cent increase	1916	1918	Per cent increase
	11	13	13	16	16	19	20
International	6-foot	\$15.67	\$27.14	74.13	\$22.61	\$76.71	\$119.77
Thorne & Co.	do	68.90	134.22	94.38	27.61	97.81	114.23
Ward	do	90.66	141.69	61.42	19.27	106.93	164.24
Madison Pike	7-foot	92.66	121.30	44.36	26.33	102.27	147.85
Mammy Harris	do	81.17	126.35	43.87	21.69	115.26	161.61
Arms	6-foot	94.72	132.11	79.19	47.17	131.69	207.72
Average				63.36			11.88

1 Increase for W and, column 17.

—The average increase in the different items of cost for grain binders ranged from 18.33 per cent for selling expense to 94.18 per cent for material cost. The average increase in cost of implement sold was 21.88 per cent.

—The ranges in the increase for the various manufacturers were not so wide as in most of the other implements covered. The ranges were: In material cost, from 14.36 per cent for Mammy Harris to 94.38 per cent for Thorne & Co.; in productive labor cost, from 18.02 per cent for Madison Pike to 33.64 per cent for Thorne & Co.; in overhead cost, from 22.09 per cent for Ward to 60.36 per cent for the International; in selling expense, from a decrease of 0.42 per cent for Ward to an increase of 43.02 per cent for Thorne & Co.; and in total cost of implement sold, from 40.23 per cent for Mammy Harris to 72.22 per cent for Thorne & Co. Thorne & Co. is a large concern, which is very active in advertisement cost studies. Mammy Harris is also a large concern, but is not active in advertisement affairs.

—The costs of one manufacturer were for a 0.5-ton binder with pole and tongue truck, while the costs of two of the other manufacturers were for 6-foot binders with pole but without tongue truck.

Price.—The average increase for all sizes of grain binders reported was 71.16 per cent. The average increase in price for the 6 and 7 foot binders was 74.84 per cent.

Profit.—The average net profits of the six manufacturers of grain binders were \$1.21 in 1916 and \$27.23 in 1918, an increase of \$26.02, or 722.36 per cent.

—In 1918 three of the manufacturers had losses. In 1916 all the manufacturers made a profit. One manufacturer made the largest profit in each of the years.

—The average net profits of the six manufacturers in grain binders were 3.33 per cent of the sale price in 1916 and 11.66 per cent in 1918. The low percentage in 1916 was largely due to the losses of three of the manufacturers. One of the manufacturers made net profits that were 24.19 per cent of the sale price in 1916 and 31.36 per cent in 1918.

MANUFACTURERS' COST OF CORN BINDERS

Statement showing manufacturing estimated cost per implement for corn binders, 1916 and 1918, as revised by the Commission and shown by report of Federal Trade Commission, 1920, p. 173, 174, Table No. 69 (key Exhibit P(S) 91)

Manufacture	Material cost			Productive labor			Overhead, warehouse, and shipping		
	1916	1918	Per cent increase	1916	1918	Per cent increase	1916	1918	Per cent increase
	1	2	3	4	5	6	7	8	9
International	\$26.79	\$36.91	36.15	\$10.49	\$12.79	22.12	\$9.82	\$16.90	71.06
Moline Plow	45.78	79.96	56.65	30.43	11.47	38.07	18.85	21.34	33.21
Murray Harris	45.96	72.96	47.99	9.46	14.79	55.39	16.96	23.19	36.44
Power & Co.	43.15	66.63	108.76	16.75	14.87	38.33	15.49	24.19	54.17
Average	55.65	118.69	113.12	12.92	15.96	22.91	24.01	35.59	47.49
			82.69			29.62			41.64

Statement showing manufacturing estimated cost per implement for corn binders, 1916 and 1918, as revised by the Commission and shown by report of Federal Trade Commission, 1950, p. 173, 174, Table No. 69 (key Exhibit P(8) 91)—Continued

Manufactures	Total manufacturing cost		Selling, general and administrative				Cost of implements sold		
	1916	1918	Per cent increase	1916	1918	Per cent increase	1916	1918	Per cent increase
	10	11	-9	12	14	15	16	17	18
International ¹	\$30.42	\$36.41	71.39	\$23.14	\$22.61	-6.75	\$72.10	\$122.02	67.86
Moline Plow	75.09	100.78	33.27	18.62	25.85	38.28	94.96	126.71	32.03
Misney Harris	79.37	111.68	40.70	30.14	38.68	28.33	106.51	151.36	40.80
Iverse & Co	68.10	125.03	83.62	15.28	27.00	76.67	68.87	152.78	121.91
Armo	82.16	109.87	32.49	42.95	45.79	6.59	132.53	215.65	59.12
Average			67.49			20.98			34.99

¹There were wide ranges in the increases for the various manufacturers. In material cost the range of increase was from 16.66 per cent for Moline Plow to 113.12 per cent for Armo; in production labor cost from 3.97 per cent for Moline Plow to 55.30 per cent for Misney Harris; in overhead cost from 12.21 per cent for Moline Plow to 71.06 per cent for the International; in selling expense from 4.56 per cent for Armo to 40.11 per cent for Iverse & Co.; and in total cost of implements sold, from \$7.09 per cent for Moline Plow to 71.81 per cent for Iverse & Co.

²Price.—The average increase in price of the five manufacturers for the corn binder was 72.16 per cent. This is almost the same as the increase in the average for all cases of grain binders, which was 72.16 per cent.

³Profits.—The average net profits of the five manufacturers in 1916 showed losses, and one of the manufacturers made a profit of only \$21.34, or 28.33 per cent. The average net profits of the five manufacturers in 1918 showed a loss. In 1918 only one manufacturer showed a loss.

⁴The average net profits of the five manufacturers in 1916 and 1918 showed a loss. One manufacturer had profits that were 26.12 per cent of the sale price in 1916 and 31.06 per cent in 1918.

MANUFACTURERS' COST OF MOWERS

Statement showing manufacturing estimated cost per implement for mowers, 1916 and 1918, as revised by the Commission and shown by report of Federal Trade Commission, 1920, p. 166, Table 63 (key Exhibit P(S) 91)

Manufacturer	Size of implement	Material cost		Productive labor		Overhead, warehouse and shipping	
		1916	1918	Per cent increase	1916	1918	Per cent increase
	1	2	3	4	5	6	7
International	S. 400	\$113.77	\$273.37	98.77	\$3.76	\$4.06	34.01
Moline Power	do	19.22	36.40	58.17	3.45	4.42	9.80
Wool	do	17.64	34.65	96.43	2.30	6.36	63.00
Ureco & Co	do	18.71	35.89	100.18	2.22	3.33	2.60
Murray-Harris	do	17.00	28.67	74.53	3.27	4.58	42.68
Sears-Roebuck	do	24.89	63.47	62.09	3.74	5.94	15.12
Emerson-Bentley	do	18.11	34.19	89.79	2.93	3.56	22.61
Armo	do	20.90	42.56	103.04	1.64	3.04	22.56
Thomson	do	22.30	39.40	78.75	4.25	5.11	50.08
Average				84.18			31.10
							34.24

¹ Decrease in overhead of Sears-Roebuck.

Statement showing manufacturing estimated cost per implement for mowers, 1916 and 1918, as revised by the Commission and shown by report of Federal Trade Commission, 1920, p. 166, Table 64 (key Exhibit P(S) 91)—Continued

Manufacturer	Size of implement	Total manufacturing cost			Selling general and administrative			Cost of implements sold		
		1916	1918	Per cent increase	1916	1918	Per cent increase	1916	1918	Per cent increase
	11	12	13	14	15	16	17	18	19	20
International	5-foot	826.12	826.00	82.80	87.00	88.00	16.32	827.72	845.00	62.00
Madison Place	do	36.00	36.00	68.50	7.14	9.64	35.01	33.23	48.50	45.86
Wend	do	36.80	45.77	24.00	6.00	6.00	1.18	33.10	52.46	60.00
Lawson	do	24.30	45.96	91.00	6.00	10.07	67.27	31.24	36.00	70.35
Monroe & Harris	do	25.00	41.94	68.00	11.00	14.72	35.45	36.00	56.50	54.16
Reese, Harkness	do	33.97	69.00	60.00	4.20	8.10	90.50	38.22	57.00	51.00
Emerson-Breast-Chain	do	24.52	41.00	74.00	10.53	17.32	64.00	36.00	61.20	74.01
Acme	do	25.54	49.00	91.75	11.34	16.50	4.20	60.00	65.50	50.50
Thomas	do	23.56	55.04	65.85	6.58	15.25	118.19	60.54	70.00	74.00
Average				69.75			59.15			62.35

The increases in the different items of cost for the various manufacturers were as follows: In material cost 36.17 per cent for Madison to 100.16 per cent for Deere & Co.; in production labor costs from 9.80 per cent for Madison to 36.00 per cent for Thomas; in overhead cost from a decrease of 4.11 per cent for Sears-Roebuck to an increase of 73.74 per cent for Emerson-Breast-Chain; in total manufacturing cost from 68.60 per cent for Deere & Co. to 91.00 per cent for Deere & Co.; in selling expense from 1.18 per cent for Wend to 118.19 per cent for Thomas; and in total cost of implements sold from 45.86 per cent for Madison to 79.35 per cent for Deere & Co. In this case both Madison and Deere & Co. are large firms.

Prices.—The average increase in price of the nine manufacturers on the flat mowers was 71.81 per cent.

Profits.—The average net profits of the nine manufacturers on mowers were 62.22 in 1916 and 66.00 in 1918, an increase of 6.41, or 10.47 per cent.

—The average percentage of net profits in sale price of mowers was 5.37 per cent in 1916 and 13.17 per cent in 1918. These relatively low percentages were due to the losses of the small manufacturers in 1916 and their low profits in 1918. Three of the larger manufacturers had net profits in 1918 that ranged from 22 per cent to over 30 per cent of their sale price.

APPENDIX H

REPORTED AND REVISED COSTS OF GRAIN BINDERS, 1918

Statement showing comparison of estimated costs of grain binders in 1918 as reported by the Manufacturers and as revised by the Commission and shown in Table 58 of Federal Trade Commission Report, page 695 (key, P(s) 31)

Manufacturer	Size in feet	Material cost		Productive labor		Overhead, ware-house, and shipping		Selling, general and administrative		Total cost sold	
		Reported	Revised	Reported	Revised	Reported	Revised	Reported	Revised	Reported	Revised
	1	2	3	4	5	6	7	8	9	10	11
International	6	\$71.32	\$67.32	\$13.13	\$13.13	\$16.71	\$16.71	\$41.56	\$22.61	\$142.72	\$119.77
Union & Co.	6	96.06	96.71	11.52	11.52	16.99	16.99	36.54	27.01	164.06	151.23
Wood	6	146.06	146.42	12.66	12.66	31.06	31.06	66.78	19.16	226.45	164.24
Moline Plow	7	86.59	85.42	11.42	11.42	26.66	24.46	50.67	26.35	177.34	147.85
Murray Harris	7	77.70	79.46	15.83	15.83	24.91	24.91	42.46	41.47	160.90	161.65
Acme	8	116.17	117.57	16.54	16.71	34.34	25.87	63.30	50.56	226.35	202.73

REPORTED AND REVISED COST OF CORN BINDERS, 1918

Statement showing comparison of estimated costs of corn binders in 1918 as reported by the Manufacturers and as revised by the Commission and shown in Table 40 of Federal Trade Commission report, page 655 (key, P(S) 91)

Manufacturer	Material cost		Productive labor		Overhead, wear, house, and shipping		Selling, general and administrative		Total cost sold	
	Reported		Revised		Reported		Revised		Reported	
	1	2	3	4	5	6	7	8	9	10
International	803.47	800.93	\$12.70	\$12.70	\$14.80	\$14.80	\$41.54	\$22.63	\$134.33	\$112.02
Medlow Flow	71.38	70.45	11.44	11.47	28.80	21.34	44.74	25.80	156.40	120.71
Moore Harris	71.00	73.00	14.70	14.70	21.10	21.10	30.22	30.08	148.62	131.36
Evans & Co.	87.00	46.43	14.47	14.47	26.75	24.10	37.00	27.00	164.17	152.78
Little	112.08	118.40	21.64	11.64	18.80	11.09	37.00	45.78	240.46	213.65

REPORTED AND REVISED COST OF MOWERS, 1918

Statement showing comparison of estimated cost of mowers in 1918 as reported by the Manufacturers and as revised by the Commission and shown in Table 30 of Federal Trade Commission report, page 692 (key, P. 8) (31)

Manufacturer	Type in feet	Material cost		Productive labor		Overhead, warehousing, and shipping		Selling, general and administrative		Total cost sold	
		Reported	Revised	Reported	Revised	Reported	Revised	Reported	Revised	Reported	Revised
		1	2	3	4	5	6	7	8	9	10
International	5	\$29.00	\$27.37	\$4.38	\$4.08	\$5.74	\$5.74	\$15.45	\$15.45	\$52.76	\$45.00
Moline	5	30.42	28.60	2.69	2.69	6.78	3.77	15.94	9.64	55.81	44.50
Ward	5	35.47	34.65	3.24	3.22	10.21	7.96	23.40	6.98	70.32	52.65
Thorne & Co.	5	38.94	38.39	2.80	2.80	3.25	4.77	13.46	10.07	66.45	56.00
Murray Harris	5	28.56	29.67	4.58	4.58	7.59	2.59	15.00	14.72	55.33	56.56
Sears-Roebuck	5	40.47	40.47	3.73	3.73	7.44	5.60	7.39	8.10	59.07	57.90
Emerson-Huntingham	5	37.79	34.19	3.47	3.47	5.68	6.22	1.80	15.32	67.00	61.20
Armo	5	36.90	42.56	5.14	3.61	10.20	4.99	20.40	16.20	72.64	65.35
Thomson	5	40.17	39.90	9.58	9.58	4.38	6.36	4.35	15.23	60.28	70.89

1 Emerson-Huntingham, column A, includes free repairs, discounts and allowances, interest on debt less miscellaneous income

APPENDIX I

GRAIN BINDERS

Wholesale prices, season 1923, to dealers

Company	W with bundle carrier	Effective date of price	T with bundle carrier	Effective date of price	W with bundle carrier and tongue truck	Effective date of price
	<i>Dollars</i>		<i>Dollars</i>		<i>Dollars</i>	
International Harvester Co.	148.00	11/ 1/23	None	None	178.00	11/ 1/23
	156.00	2/ 5/23			186.00	2/ 5/23
	166.00	3/ 8/23			196.00	3/ 8/23
Deere & Co.	148.00	9/ 1/22	152.00	9/ 1/22	172.00	9/ 1/22
	158.00	1/15/23	168.00	1/15/23	182.00	1/15/23
	168.00	3/ 1/23	173.00	3/ 1/23	192.00	3/ 1/23
Emerson Brandingham	146.00	9/15/22	151.00	9/15/22	176.00	11/ 1/23
	156.00	1/22/23	161.00	1/22/23	186.00	1/29/23
					196.00	3/11/23
Maline Flow Co.	None	None	181.00	11/16/22	None	None
			183.00	3/26/23		
			183.00	6/ 1/23		
Minnesota State Franch.	132.00	Search.	136.00	Search.	141.00	Search.
Avery & Sons	146.00	Search.	151.00	Search.	176.00	Search.
	156.00	Search.	161.00	Search.	186.00	Search.
	166.00	Search.	171.00	Search.	196.00	Search.
Aono	175.00	Search.	179.00	Search.	201.00	Search.

CORN BINDERS

Wholesale prices, season 1923, to dealers

Company	W with bundle carrier	Effective date of price	W with bundle carrier	Effective date of price	W with bundle carrier	Effective date of price
	<i>Dollars</i>		<i>Dollars</i>		<i>Dollars</i>	
International	146.00	11/ 1/23	156.00	2/ 1/23	166.00	5/ 8/23
Deere & Co.	146.00	9/ 1/22	146.00	1/15/23	176.00	2/ 1/23
Emerson Brandingham	146.00	8/18/22	156.00	1/22/23		
Murray-Harris	146.00	11/ 1/23	156.00	1/29/23	166.00	3/15/23
Maline Flow Company	146.00	11/29/22	156.00	3/29/23	166.00	6/ 1/23

MOWERS

Wholesale prices to dealers, season of 1923

Company	5' regular lift	Effective date of price	5' regular lift	Effective date of price	5' regular lift	Effective date of price
	<i>Dollars</i>		<i>Dollars</i>		<i>Dollars</i>	
International Harvester Co.	56.00	11/ 1/22	56.00	2/ 5/23	64.00	5/ 8/23
Deere & Co.	57.50	9/ 1/22	60.00	1/15/23	64.25	5/ 1/23
Emerson-Brantingham	56.00	9/15/22	58.00	1/22/23		
Massey-Harris	56.00	11/ 1/22	56.00	1/24/23	64.00	5/15/23
Moline Plow	56.50	11/10/22	56.50	3/26/23	63.50	6/ 1/23
Minnesota State Prison	47.00	Season	47.00	Season	47.00	Season
Avery & Sons	56.00	Season	56.00	Season	64.00	Season
Thomas	61.25	Season	61.25	Season	61.25	Season
Sears-Roebuck	51.00	Season	51.00	Season	51.00	Season
Armo	65.00	Season	65.00	Season	65.00	Season

RAKES

Wholesale prices to dealers, season 1923

Company	10', 26 teeth, self- driver	Effective date of prices	10', 26 teeth, self- driver	Effective date of prices	10', 26 teeth, self- driver	Effective date of prices
	<i>Dollars</i>		<i>Dollars</i>		<i>Dollars</i>	
International Harvester Co.	29.50	11/ 1/22	30.50	2/ 5/23	33.50	5/ 8/23
Deere & Co.	29.00	9/ 1/22	31.00	1/15/23	33.00	5/ 1/23
Emerson-Brantingham	26.75	9/15/22	26.75	1/22/23		
Massey-Harris	30.00	11/ 1/22	32.00	1/24/23	35.00	5/15/23
Moline Plow Co.	30.25	11/10/22	32.25	3/26/23	34.50	6/ 1/23
Minnesota State Prison	21.50	Season	26.50	Season	26.50	Season
Avery & Sons	26.00	Season	26.00	Season	33.00	Season
Thomas Mfg. Co.	26.25	Season	30.25	Season	30.25	Season
Sears-Roebuck	26.00	Season	26.00	Season	26.00	Season
Armo	36.00		36.00		36.00	
Allen & Co.	35.00	Season	35.00	Season	53.00	Season
Balmain & Co.	31.00	Season	31.00	Season	31.00	Season
Munnings	34.00	Season	34.00	Season	34.00	Season

Statement showing wholesale prices of old and new line harvesting machines in force on January 1, 1913, as appears from Exhibits D(s) 21 compared with prices received 1913-1923, inclusive, expressed in index numbers as shown by Exhibits D(s) 20, R. 601, computed by the company, and Exhibit P(s) 141, R. 568, computed by the Government—Continued.

	Prices in force Jan., 1913	Mar., 1916	Dec., 1916	Feb., 1917	Sept., 1917	Nov., 1919	Apr., 1920	Nov., 1920	Apr., 1921	Oct., 1921	Feb., 1922	May, 1922
	1	2	3	4	5	6	7	8	9	10	11	12
New line machines—Continued												
2 F. & O. disc gang plow	85.00	95	117	117	100	103	222	223	200	162	167	167
3 F. & O. Little Genius trac. plow	75.00	128	167	167	245	245	260	271	231	190	165	165
3-tine wagon	97.35	101	104	114	147	186	186	223	190	177	162	178
Tread separator	48.50	105	109	109	119	134	155	155	139	139	139	149
1-manure spreader	95.00	100	103	118	132	153	132	108	132	142	128	141
Knife grinder	2.50	110	120	120	106	100	170	180	162	150	100	100
Feed grinder, type B8	18.50	100	108	119	167	154	160	200	180	160	185	200

¹ Index numbers as to these machines computed by the company. All other index numbers computed by the Government.

² These really belong to the harvester line (New, IV Rec. 1707-1709).

Index numbers in excess of 100 indicate per cent of increase in price on date shown over the base price.

Appendix K

BRANCH HOUSES OF HARVESTING-MACHINE MANUFACTURERS

Statement showing number of branch houses maintained by harvesting-machine manufacturers, 1919-1923, inclusive, as appears from Exhibits P (S) 1, Exhibit volume p. 1 and Record pages 268, 31A, 58, 201, 318, 84, 108, 262A, 175, 183, 308, 353, 320, 550, 560, 341, 254B

Company	1919	1920	1921	1922	1923
	Number	Number	Number	Number	Number
International	91	91	91	91	91
Deere & Co.	22	22	22	22	22
Harmon-Bramingham	20	20	20	20	20
Massey-Harris	8	8	8	8	8
John Deere	24	24	24	24	24
Minnesota					
Atter	13	13	13	13	13
Wood	7	7	7	7	7
Thorne	1	1	1	1	1
Stacy-Hartshorn					
Independent	1	1			
Arno	1	1			
Ohio State					
Allen					
Baldwin				7	1
Yale-Hopewell					
Messenger					
Eureka					

¹ Wood has 2 commission dealers in addition, 1 at Charlotte, N. C., and 1 in San Francisco.

² No branch houses maintained.

³ Allen, Ohio State, and Yale-Hopewell handled through jobbers.

⁴ These really were warehouses (Nash, 1 Rec. 119). Company now out of business.

DEALERS IN HARVESTING MACHINES

Statement showing number of dealers in harvesting machines, 1919-1923, as appears from Exhibits P (S) 2, Record 400, and Exhibit Vol. III and Record pages 2219-272, 219, 2192-2197, 204, 518-523, 2201-2205, 202A, 175, 154, 308, 254A, 355, 321, 550, 561-565, 341, 109

Company	1919	1920	1921	1922	1923
	Number	Number	Number	Number	Number
International ¹	13,652	13,652	12,218	12,940	12,961
Deere & Co.	7,370	7,370	7,370	7,370	7,370
Emerson-Brantingham		3,900	2,534	2,541	2,540
Mauzy-Harris	1,672	1,677	1,441	1,653	1,807
Moline	(*)	(*)	(*)	(*)	(*)
Minnesota	951	951	951	951	1,008
Avery	811	905	796	102	1,194
Wood	1,366	1,774	1,107	1,618	(*)
Thomas	427	510	377	370	321
Sears-Roebuck	(*)	(*)	(*)	(*)	(*)
Independent	1,130	1,130	(*)	(*)	(*)
Arme	2,000	1,000	100	(*)	(*)
Ohio Hake	212	220	202	253	712
Allen	65	33		86	79
Bateman	(*)	(*)	(*)	(*)	(*)
Yale-Hopewell	2	2	1	(*)	(*)
Messenger	6	2	4	13	2
Eureka	7	(*)	(*)	(*)	(*)

¹ The International Harvester had 20,110 dealers in 1914, 20,815 for 1915, and 17,007 for 1916. The number for 1919 was omitted. Exhibit volume P (S) 4 shows it sold 370,902 harvesting machines in 1914, 326,320 in 1915, and 225,420 in 1916.

² Number of dealers not given.

³ Wood retired from harvester business December, 1922; contracts for 1923 canceled.

⁴ No dealers employed.

⁵ Independent retired from business 1920.

⁶ Arme retired from harvester business 1921.

⁷ Yale-Hopewell jobbers, 1919-1921. Retired from harvester business 1921.

⁸ Eureka retired from harvester business 1919.

**AVERAGE NUMBER OF HARVESTER MACHINES SOLD PER
EACH DEALER EMPLOYED, 1919-1923, INCLUSIVE**

Statement showing average number of harvesting machines sold per each dealer employed 1919-1923, inclusive, as computed by the Government from table showing total number of harvesting machines sold (infra, pp. 48-57) and table showing total number of dealers employed (supra, p. 144)

Company	1919	1920	1921	1922	1923
	1	2	3	4	5
	Number	Number	Number	Number	Number
International	(?)	19.6	8.1	11.7	12.1
Deere & Co.	6.3	7.7	3.2	2.9	4.1
Emerson-Brantingham	(?)	7.4	4.1	4.0	4.9
Manley Harro	7.3	7.9	4.0	3.6	7.1
Moline	(?)	(?)	(?)	(?)	(?)
Minnesota	12.3	12.7	3.1	4.7	7.1
Atter		9.0	12.5	9.7	6.9
Wood	4.1	4.2	2.8	3.4	(?)
Thomas	9.1	13.2	5.4	6.1	8.2
Scars, Rockback	(?)	(?)	(?)	(?)	(?)
Independent	4.1	2.0	(?)	(?)	(?)
Acme	2.2	8	1.4	(?)	(?)
Oliver Bako	3.7	0.8	1.2	3.9	4.2
Allen	6.9	18.2		7.8	11.8
Bateman	(?)	(?)	(?)	(?)	(?)
Yale-Hopewell	(?)	(?)	(?)	(?)	(?)
Mosinger	4.0	7.5	5.9	8.1	8.6
Kurka	2.3	(?)	(?)	(?)	(?)

¹ Number of dealers 1919 not stated.

² Number of dealers not given—Moline and Bateman.

³ Not in harvester business for years stated.

⁴ Scars, Rockback—no dealers employed.

⁵ Yale-Hopewell sold through jobbers 1919 and 1920.

Notes.—Number sold per dealer by International in 1914, 12.2; in 1915, 12.2; and in 1916, 13.4.